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CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

CONFIRMATION HEARINGS ON APPOINTMENTS TO THE FEDERAL JUDICIARY AND THE DEPARTMENT OF JUSTICE

JULY 21, SEPTEMBER 11, OCTOBER 20 AND 22, 1987

Part 3

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TUESDAY, JULY 21, 1987

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:14 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy presiding.

Also present: Senators Thurmond, Specter, Grassley, and Humphrey.

Staff present: Steven J. Metalitz, chief nominations counsel; Robert J. Short, minority chief investigator.

Senator SPECTER. Ladies and gentlemen, we will commence these hearings. Senator Leahy is on his way, but his staffer has stated that it is appropriate with Senator Leahy, who will be presiding, for us to proceed at this time.

I personally have a commitment to offer an amendment on the floor to the trade bill, so I will call first on Senator Heinz, and Justice Hutchinson and Judge Scirica to join Senator Heinz. Prior to my comments, we will hear from my distinguished colleague, Senator Heinz.

Senator HUMPHREY. Mr. Chairman, may I be recognized before we begin, because once your colleague is recognized, the whole train of events will transpire? I would like to be recognized.

Senator SPECTER. Senator Humphrey.

Senator HUMPHREY. Thank you, Mr. Chairman. I regret that Chairman Biden is not here, and likewise Chairman Leahy, who will be here momentarily, I guess, but before—Mr. Chairman, I am perfectly willing to withhold for a few minutes until Chairman Leahy arrives, provided that—of course, you cannot speak for him, but provided that at that point I might be able to make this statement which is very brief.

Senator SPECTER. Well, if there is any statement to be made, however brief, I think we ought to await Senator Leahy's arrival. We are starting these proceedings only for the introductions, and knowing my colleague, Senator Heinz, as I do, I do not expect his introduction to be controversial.

Senator HEINZ. And neither do the two people on either side of me, Mr. Chairman.

Senator SPECTER. I suggest to Senator Humphrey that if we are going to do anything aside from the customary introductions that we ought to await Senator Leahy's arrival, and I appreciate Senator Humphrey's agreement to that.

So, Senator Heinz, you may proceed.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. Mr. Chairman, thank you. It is a great privilege, as well as a pleasure, to appear here with not one but two of the President's nominees for the Third Circuit Court of Appeals. I am referring, of course, to Judge Anthony Scirica and Justice William Hutchinson, whom I have had, as have you, Senator Specter, the pleasure to know for many, many years.

I think it is relatively infrequent that somebody gets to introduce someone you consider a personal friend to this committee, but to have the opportunity to introduce two is rare indeed.

I have known Bill Hutchinson since he was a legislator going back perhaps 15 years to Schuylkill County. He has since become a member of the Supreme Court of Pennsylvania. That was in 1982, and prior to that he served five terms in the Pennsylvania House of Representatives, serving for nine of those years on the House Judiciary Committee.

Bill has a very distinguished career in the legal community. He has written some very good, clear and thoughtful articles about the role of the judiciary. He has served in many other capacities, such as assistant district attorney and county solicitor for Schuylkill County.

The fact that he went to Harvard Law School should not be in any way held against him. I myself have a degree from the Harvard graduate school. It is, as I say, a great privilege to introduce somebody who is so well qualified as well as someone whose character I can fully attest.

Tony Scirica is here in a similar vein as far as I am concerned. He has been very much in demand as a high public official in Pennsylvania, not just as a State representative as we all know him to have been, but he was elected to a 10-year term on the Common Pleas Court in Montgomery County after very distinguished service in the legislature.

Although he now serves on the U.S. District Court for the Eastern District, frankly, there was a time at which it was not clear whether he was going to be U.S. attorney or serving on the District Court for the Eastern District.

In the case of the position in which he now serves, our merit selection committee recommended him very highly. As it turned out, he does not appear to have made a very bad decision.

It is worth pointing out that when he was recommended for his position that he now serves in that the merit selection commission is a bipartisan commission and they found that he was, as I say, extremely well qualified.

If I might add, Tony Scirica also served on the Judiciary Committee of the Pennsylvania House of Representatives. He was minority chairman there for a number of years when he was in the House.

Tony worked on a number of landmark bills, including the Pennsylvania divorce code, the Grand Jury Act, the Witness Immunity Act, and the Pennsylvania Crime Commission Act.

In fact, both Tony and Bill worked together in the legislature, and on the Judiciary committee revising and drafting our new judicial code. So, Mr. Chairman, I think this is a very proud day for the Commonwealth of Pennsylvania. It is a fine day for our constituents and I think for the country, as we have the opportunity to recommend to the Judiciary Committee two such fine individuals.

Tony and Bill and your families, we are delighted that you are here and I hope that the committee will act expeditiously. We need you on the court and the people need you on the court.

Senator SPECTER. Thank you very much, Senator Heinz.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. After those comments, nothing more need be said, but that will not stop me from saying a word or two, but I shall be relatively brief in light of the number of our colleagues who are here.

First, I would like to thank Senator Leahy and Senator Biden, chairman of the committee, for expediting these proceedings so that we may go forward and have the service of these men and others on the federal bench.

I would only note that I have known both Justice Hutchinson and Judge Scirica for the better part of two decades. They are uniquely well qualified with extraordinary academic attainments. Both have served in the Pennsylvania General Assembly and bring quite a breadth of experience from the legislative role.

Both have experience practicing law. Justice Hutchinson serves on the Supreme Court of Pennsylvania and there are many who are sorry to see him leave that court. Judge Scirica serves on the federal court for the eastern district and many are sorry to see him leave that court. But the Court of Appeals for the Third Circuit is a very important tribunal and their membership will be very, very helpful there.

So thank you all very much, and at this time I yield to Senator Grassley, who has a nominee.

STATEMENT OF HON. CHARLES GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Would Judge Wolle come to the table, please?

Again, I think that I brought up the importance of filling this position in the State of Iowa to the chairman of the committee, Senator Biden, and I want to publicly thank Senator Biden for his very quick acknowledgement of that concern of mine and bringing Judge Wolle, the President's nominee for the district court in the State of Iowa, to the attention of this committee and immediately for this hearing, and I hope that Senator Biden will help expedite this before our August 8th recess.

So I am pleased to introduce to the committee and to all of the public here today the President's nominee to serve on the U.S. District Court for the Southern District of Iowa, Charles R. Wolle.

Justice Wolle comes well prepared to assume this position because he currently sits on the Iowa Supreme Court, the highest court in my State, where he has heard a wide variety of cases which have included federal and State constitutional questions. Mr. Wolle has served in this capacity for 4½ years.

Prior to the position he currently holds, Chuck sat on the Iowa District Court for the Third Judicial District for my State of Iowa. For both judicial positions, Chuck was nominated by a commission consisting of laypersons, lawyers, and a senior judge, which was then followed by the appointment from a list of three or two, whatever the case may have been, by the governor of our State. So he is extremely well respected by the Iowa bar, and this is an entity which has come to know Chuck well over the 26 years he has enjoyed membership in that organization.

In addition, you have to consider that he has 20 years of trial practice, in addition to his service on the bench, and I can think of no one more qualified to serve as district judge for the Southern District of Iowa.

His roots go deep in Iowa's soil, as he comes from a long line of families who have been involved in farming. He still has a 90-year-old mother and a 94-year-old father who come from farm families, and I know that they are going to be very proud of the appointment that their son has received and proud of his confirmation.

So he is a true representative of rock-solid Iowa and there is no doubt in my mind that he will serve with great distinction as federal judge for the Southern District of Iowa, just like he has served well the people of Iowa and justice in Iowa as a member of the Iowa Supreme Court.

Thank you, Mr. Chairman.

Senator LEAHY. Thank you very much, and I thank you for being here and we will get back to you. I also want to express my appreciation to Senator Thurmond and Senator Specter in helping to get this hearing rolling.

I left the floor three times on the way over here. Each time, I got yanked back for something that was urgent to get moving, and then it turned out there were amendments, I guess, that were not going to be brought up anyway. So I apologize and appreciate your going ahead.

In the interest of time, I will place my opening statement in the record.

[Prepared statement follows:]

SENATE COMMITTEE ON THE JUDICIARY

HEARING ON JUDICIAL NOMINATIONS

JULY 21, 1987, 2:00 P.M.

OPENING STATEMENT OF SENATOR PATRICK LEAHY

This afternoon, the Judiciary Committee holds its eighth hearing in this Congress to consider nominations to the federal courts.

Today, we will take testimony on six nominations. Three nominees have been proposed for Circuit Courts of Appeals: Jerry E. Smith, of Texas, for the Fifth Circuit, and Justice William D. Hutchinson, and Judge Anthony J. Scirica, both of Pennsylvania, for the Third Circuit. The other three nominees have been named to United States District Courts: John D. Tinder, to the Southern District of Indiana; Justice Charles R. Wolle, to the Southern District of Iowa; and Thomas S. Ellis, III, to the Eastern District of Virginia.

As we customarily do, we will hear first from Senators and members of the House of Representatives who wish to introduce

nominees to the Committee. Before we turn to these introductions, let me note for the record that each nominee before the Committee today has completed an extensive questionnaire on his qualifications, experience, and financial situation. The publicly available portions of these questionnaire responses will be printed in the record of this hearing. We will also keep the record open for a limited time for follow-up questions to the nominees, and for additional questions that may be submitted by members of the Committee who are unable to be present this afternoon. Finally, we will include in the record the full introductory statements of home-state Senators and members of the House of Representatives.

Senator LEAHY. Now, we have a number of other Senators who wanted to speak. I see Senator Lugar and Senator Quayle here from Indiana. Gentlemen, why do you both not come to the table? Is Representative Jacobs here?

Senator GRASSLEY. Yes, he is here; he is behind Quayle.

Senator LEAHY. Oh, yes, I am sorry. These lights are impossible. Let us start with Senator Lugar.

STATEMENT OF HON. RICHARD LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator LUGAR. Mr. Chairman, we deeply appreciate your conducting this hearing and I am honored to introduce to this distinguished committee John Tinder, nominated to the U.S. District Court for the Southern District of Indiana. John is joined today by his wife, Jan, who is a practicing attorney in Indianapolis.

John Tinder's academic and professional credentials are impressive. He earned a bachelor of science from Indiana University, graduating cum laude in 1972. He continued at Indiana University and graduated with his juris doctorate degree in 1975.

During his years as a law student, John served as a law clerk in both a private firm and in the U.S. attorney's office. This was a foreshadowing of things to come, since John was in private practice for 7 years before assuming his current position as the U.S. attorney for the Southern District of Indiana in 1984.

Much of John Tinder's time since his commencement from law school has been devoted to public service. He has lent his talents to a wide variety of public sector endeavors, including a stint as bail commissioner, some time as an assistant U.S. attorney, 6 months as a public defender, and several years as a chief trial deputy in the Marion County prosecutor's office.

For the past 7 years, John has also shared his experience by teaching a course in trial advocacy at his alma mater. He volunteers in his spare time at the Cathedral Kitchen, a soup kitchen which feeds the indigent in Indianapolis.

John Tinder has been an outstanding district attorney. He headed up a sting operation last year which led to the arrest of 389 men and women wanted by numerous police agencies for crimes, including drug dealing, prison escape, robbery, rape, and murder. This is just one of numerous examples of the fine job he has done in fighting crime and corruption in Indiana.

Because of his good work, John was appointed in 1986 to the prestigious Attorney General's Advisory Committee, a group of 15 federal prosecutors who advise the Attorney General and work to improve our justice system.

The accolades made by those who know John Tinder both personally and professionally are too numerous to recount. However, one member of the Indiana bar describes him in this fashion: "He exemplifies the highest standards of integrity, honesty and professional responsibility. He is fully committed to the legal profession and seeks to assist in constantly improving our system of justice."

A member of the judiciary in Indiana had this to say about John Tinder: "John is an articulate and intelligent professional dedicated to the law. To me, a professional is one who is dedicated to his

occupation, holds beliefs that are fair and just, presents his case with integrity, gives those he serves 100 percent, and proceeds only after being completely prepared for the battle ahead."

Certainly, no higher praise can be given to one who has devoted his professional life to the furtherance of the law. I am pleased that the merit selection commission which Senator Quayle and I established in 1981 has twice recommended John Tinder for a federal appointment.

I thank you for the opportunity to speak on his behalf and I urge the committee to support his confirmation. I thank you, Mr. Chairman.

Senator LEAHY. Thank you very much.

Senator Thurmond, if you have no objection, I would like to recognize Senator Quayle and Congressman Jacobs for their statements.

Senator THURMOND. I would be delighted.

Senator LEAHY. Senator Quayle.

STATEMENT OF HON. DAN QUAYLE, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator QUAYLE. Thank you, Mr. Chairman. Let me just ask unanimous consent that my entire statement be made a part of the record.

Senator LEAHY. Should we assume that you are coming here to praise him, not to bury him?

Senator QUAYLE. The statement is very praiseworthy, Mr. Chairman, and I thought instead of giving about a 20-minute testimony——

Senator LEAHY. No; that is quite all right.

Senator QUAYLE [continuing]. On the attributes of John Tinder that I might just summarize in about 19½ minutes about why he really——

Senator LEAHY. That is on top of the 20 minutes or so that you and Dick spent cornering me on the floor of the Senate to tell me, but go ahead.

Senator QUAYLE. Absolutely, and we knew that we had your attention then and now we know we have it.

Mr. Chairman, it is really an honor to join with Dick Lugar, and also Congressman Jacobs—we are glad to have Andy over here—to enthusiastically endorse the nomination of John Tinder to be a U.S. district court judge.

I might just point out to this distinguished panel that Dick Lugar and I have been before you six times before with six recommendations, and each one of them—and the most recent one, Larry McKinney, has been approved unanimously. We have every expectation that John Tinder will also be approved, and we hope unanimously.

The joint merit commission that was set up back in 1981 by Senator Lugar and myself is a composite of nine individuals from around the State that do make these recommendations. We have gone by their recommendations and I think that you can see, and certainly you attest to it by your affirmation on a unanimous basis,

that we have sent some very quality candidates before you as nominees. John Tinder is no exception.

He has a tremendous background in the legal field. Senator Lugar pointed out his outstanding record as U.S. district attorney. He was a practicing lawyer before that, and I believe his civic involvement, his legal expertise, and his basic integrity, honesty and hard work capabilities make him really an outstanding nominee.

So it is with a great deal of enthusiasm that I endorse the candidacy of John Tinder, who is a friend. He has a very outstanding wife, Jan Carroll, who at one time in her life had a respected and honest job as being the AP reporter in the State of Indiana, and now she has joined a very distinguished law firm in Indiana.

Perhaps I have always accused her of switching fields, since newspapers are my background and now she is joining the other side. But in any event, she is a very capable partner in many respects to John Tinder, who is your nominee.

So, Mr. Chairman, it is with a great deal of energy and dedication that we do recommend John Tinder. We are sure that you will find him to have the qualities and the talents that we have outlined, and hope that you will follow the precedent and practice that he will be approved unanimously by this committee and also by the entire Senate.

[Prepared statement follows:]

STATEMENT OF U.S. SENATOR DAN QUAYLE (R-IN)
AT THE SENATE JUDICIARY COMMITTEE HEARING
ON THE NOMINATION OF JOHN D. TINDER
TO BE A U.S. DISTRICT COURT JUDGE
FOR THE SOUTHERN DISTRICT OF INDIANA
July 21, 1987

Mr. Chairman, I am pleased to have the opportunity to appear before you today as the Judiciary Committee considers the President's nomination of the United States Attorney for the Southern District of Indiana, John D. Tinder, to be a U.S. District Court Judge for the Southern District of Indiana.

I am very proud to introduce John Tinder. He is a man of considerable skill, integrity and ability. I commend President Reagan for nominating this highly qualified and experienced attorney and prosecutor to the federal bench.

In nominating John Tinder on June 2, the President accepted the recommendation of the Merit Commission on Federal Judicial Appointments, the non-partisan merit selection panel that Senator Lugar and I established in 1981 to screen candidates and propose finalists for all federal judicial appointments in Indiana.

To date, six vacancies on the federal bench in Indiana have been filled by candidates who have been selected through this process, nominated by the President, approved by this Committee and unanimously confirmed by the U.S. Senate. The sixth nominee, Judge Larry J. McKinney, received unanimous approval by this Committee and was unanimously confirmed by the full Senate just last week to be a U.S. District Court Judge for the Southern District of Indiana. In addition, one of the federal district court judges recommended by our Merit Commission, Michael S. Kanne, served with such distinction that he was nominated and unanimously confirmed to be a U.S. Circuit Court Judge for the Seventh Circuit Court of Appeals earlier this year.

Mr. Chairman, John Tinder, who possesses outstanding legal experience and credentials, has been nominated to fill the vacancy on the U.S. District Court for the Southern District of Indiana that was created when former Chief Judge James E. Noland took senior status effective January 1, 1987.

A native and resident of Indianapolis, Indiana, John Tinder received his Bachelor of Science degree in business with honors from Indiana University at Bloomington in 1972. In 1975, he received his law degree from Indiana University.

After being admitted to the Indiana Bar, John Tinder served as Assistant U.S. Attorney for the Southern District of Indiana from 1975-1977, during which time he was responsible for the preparation and trial of both civil and criminal cases. He was then in private practice in Indianapolis from 1977-1984. During that period, he also held two part-time positions. As a Public Defender, he was responsible for the representation of indigents charged with felonies. Following his service in that position, he became Chief Trial Deputy for the Marion County Prosecutor's Office, where his wide-ranging duties included general supervision of criminal case investigation and prosecution.

From 1980 to the present, John Tinder has been adjunct professor of law at the Indiana University School of Law, teaching a course on trial advocacy. He has been an instructor of similar programs in Indiana and around the nation. He has also lectured in continuing legal education programs and before the District Judges Association of the Seventh Federal Circuit.

In 1984, pursuant to the recommendation of the Merit Commission on Federal Judicial Appointments, John Tinder was nominated by the President, approved by this Committee and confirmed by the full Senate to be the U.S. Attorney for the Southern District of Indiana, which encompasses 60 counties and approximately two-thirds of the population of the State of Indiana.

In this capacity, he has formulated policies concerning criminal investigation and prosecution. As the chief law enforcement officer of this region, he has also managed the operations of an office staffed by 18 Assistant U.S. Attorneys. John Tinder has handled all of his responsibilities as U.S. Attorney for the Southern District of Indiana in a highly professional manner.

John Tinder is married to Jan M. Carroll, a former reporter for Associated Press in Indiana who is now an attorney in private practice in Indianapolis.

I believe John Tinder's considerable legal experience, management skills and proven abilities make him fully qualified to serve on the U.S. District Court for the Southern District of Indiana.

Again, I thank the Chairman and members of this Committee for allowing me this time to speak on John Tinder's behalf. I urge the members of the Committee to act promptly and favorably on his nomination.

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Senator LEAHY. Thank you very much.

Congressman Jacobs, I appreciate very much your presence here. I know that required a lot of juggling and changing around of schedules for you, and I appreciate it very much.

STATEMENT OF HON. ANDREW JACOBS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. JACOBS. Well, it is a pleasure and it is a privilege, Mr. Chairman. I do not believe this panel will ever have before it a more bipartisan appointment than that of John Tinder from Indianapolis.

John is a little bit like the old Sarah Lee cake ad. Nobody of character does not like John Tinder in my town. As he approaches the age of 40, he has probably accomplished more in his profession of law than most people do in the same profession in an entire lifetime.

A thousand years ago when I was in law school, I worked my way through as a police officer in our community in Indianapolis, and John's father was a prosecuting attorney. He was nicknamed Honest John Tinder, and not facetiously. He was probably one of the most honorable people in public office I have ever known in my life, and I had the opportunity to work closely with him.

The apple has not fallen very far from the tree. John Tinder, your nominee today, is a person of enormous accomplishment in his profession. He applies himself. He is not lazy.

But I think what is more important—in fact, what is most important is that he is a good person. He is a person of empathy, not merely compassion for the person charged with a crime, but with compassion for the victim of the crime—the proper balance.

Two decades ago, Mr. Chairman, I had the opportunity to appear before this panel to endorse the nomination of James E. Noland of Indiana, who is now taking senior status as a federal district court judge.

I predicted at that time that nobody would ever regret placing James E. Noland on the federal bench. I come here today to echo that sentiment about John Tinder, whom I not only respect, but admire as much as I have ever admired anybody in public life.

I thank you for your attention.

Senator LEAHY. Thank you very much.

I would tell the nominee that we have heard a great deal about you from your congressional delegation and I am glad to have you here. I also know that Congressman Jacobs and Senator Lugar and Senator Quayle have other committee meetings going. You are welcome to stay, but we will have to get back to Mr. Tinder in a few minutes, so you are also welcome to go. I appreciate your coming here.

There are so many members of Congress here who are supposed to be off at other meetings at the same time. I know the distinguished Senator from Texas, Senator Gramm is here.

Phil, why do you not come forward?

Senator HUMPHREY. Mr. Chairman?

Senator LEAHY. I know you have Mr. Smith to introduce, and we promised all of these members of Congress that they would have a chance to speak. I know that Senator Warner is also waiting, and I

would like to hear these members so that they can go. The rest of us have to stay anyway.

Senator HUMPHREY. Mr. Chairman?

Senator LEAHY. Yes?

Senator HUMPHREY. Other Senators likewise have other hearings they would like to attend. I am one, and I would like to be recognized for about 3 or 4 minutes to make a statement so that I could then leave.

I recognize that my colleagues have responsibilities as well.

Senator LEAHY. Well, I just want to be consistent with what we had promised the Senators here. If Senator Gramm has no objection, I would be happy to.

Senator HUMPHREY. Well, does a Senator on this committee have a right to be recognized?

Senator LEAHY. Of course. If the Senator wants to step in and take the time, of course he can.

Senator HUMPHREY. I thank the Chair.

Senator LEAHY. Sorry, Phil; we will get back to you.

Senator HUMPHREY. I was prepared to seek recognition at the outset, but because of problems the Chairman had in arriving here, I chose—I really was forced to wait. Nonetheless, I will be brief as possible in respect to members of the committee and the nominees and my colleagues who are waiting to testify.

Mr. Chairman, I want to again call for a more expeditious schedule for the hearing of President Reagan's nominee to the Supreme Court, Robert Bork. I want to place in the record the report of a study done recently by the Congressional Research Service that shows that over the last 25 years the average length of time consumed between the official submission of a nomination and the beginning of hearings by this committee has been 18 days.

For Judge Bork, under the proposed schedule of the Chairman, it will be 70 days, and I just——

Senator LEAHY. Will the Senator yield for a question? Did any of those hearings——

Senator HUMPHREY. I have not yielded, Mr. Chairman.

Senator LEAHY. All right.

Senator HUMPHREY. But I will.

I think that a delay of 70 days is unfair, it is unconscionable, it is unreasonable, and it is wholly unnecessary. I really do urge the members on the Democrat side to prevail upon the chairman to schedule these hearings on a more reasonable timetable.

Seventy days is really just outrageous, against the average, which by the way includes nominations made under similar circumstances, which is to say which span a proposed recess—if that was your question, for which I will now yield, that includes nominations many of which——

Senator LEAHY. You said the average time was what again?

Senator HUMPHREY. Roughly 18 days.

Senator LEAHY. And those 18 days included nominations that had a 31-day recess in between nomination and hearing?

Senator HUMPHREY. I cannot attest to the length of the recess, but it included August recesses, yes.

Senator LEAHY. Which is always at least 4 weeks, sometimes 5 weeks. So these typical 18-day nomination delays would include

anywhere from 30 to 35 days of recess. It is a neat arithmetical trick, but I——

Senator HUMPHREY. No, it is not trick, and I have included in the record, if the Chairman——

Senator LEAHY. I am pleased to include that in the record.

Let us see. Last year when the Rehnquist nomination came up, Senator Thurmond, of course, was chairman. We did not have the 30-day recess interfering in there, but that was how many weeks?

Senator HUMPHREY. Twenty-nine days, as opposed to 70.

Senator LEAHY. If we did not have the recess in here, about 35 days, it would be roughly the same amount of time. Also, as I recall, having been there at the time when this conversation was held, the senior Republican member of this committee, the former distinguished chairman of this committee, Senator Thurmond, agreed to the September 15 date for the Bork hearing.

Senator Thurmond is here, of course, and can speak for himself, but I recall being at that conversation.

Senator HUMPHREY. Inasmuch as I have the floor, before Senator Thurmond responds, it is my understanding that the agreement between the chairman and the ranking member stipulated that there would be a date certain for reporting the nomination.

No date certain was ever reached, and so therefore I would assume that the agreement on the point of September 15 is moot.

Senator THURMOND. That is correct.

Senator LEAHY. Well, I guess I heard it differently.

Senator HUMPHREY. You just heard it from one of the parties, Mr. Chairman.

Senator LEAHY. But I mean I assume the agreement is still the agreement made at the time it was made. If you want to bury it, of course, that is up to the chairman and the ranking member. I am happy to be there any time.

Senator THURMOND. Mr. Chairman, Senator Biden first talked about September 15 and I told him we would have to talk to Senator Dole and Senator Byrd and see if we could not get together.

We never did reach an agreement on a time to vote, so I told Senator Biden that I would agree to September 15 if we could have a definite time to vote. We thought the four of us would agree on a time, but we never did.

Senator LEAHY. I see.

Senator THURMOND. So that was the situation.

Senator LEAHY. I might note to my distinguished colleague and good friend from South Carolina that I have been following a schedule like most Senators here, including the ones who are waiting to speak to this committee, of going from very, very early in the morning until midnight on a 5 and 6-day-a-week basis.

I am looking forward to the time we have in August to be able to go back to my farm in Vermont and read literally hundreds and even thousands of pages of material, either writings by Judge Bork or about Judge Bork.

In that regard, I would strongly suggest something to those groups on the far right or the far left or anybody else who is so adamant about the day of Judge Bork's nomination. The various lobbying groups say that it is absolutely essential to the country that he be immediately confirmed or absolutely essential to the

country that he never be confirmed. They may want to do the same thing I am going to do, spend August reading the record, listen to the hearings, and then lobby like mad either for or against him—afterwards.

They will have plenty of time during the hearings to hear the whole record, plenty of time before the debate starts on the floor, and I suspect plenty of time during the debate on the floor.

But those who are willing to at least listen to the record being made before they either come out for or against him in their lobbying efforts will probably do so with a great deal more credibility.

Senator HUMPHREY. I quite agree, Mr. Chairman, and I commend you—it is unfortunate that others cannot be commended in that respect—for keeping an open mind until after the hearings.

Senator LEAHY. Well, the Congressional Research Service delivered four binders of material, and three more are to be delivered today, about 3,000 pages in all. I know I want to look through that.

I would also suggest to some who have been lobbying from the administration that there are a number of us on this committee who have very much of an open mind on this. That open mind is going to be influenced by some lobbying tactics that I find reprehensible, and I would hope that that word might get back.

Now, can we get on with the hearings?

Senator HUMPHREY. Yes.

Senator LEAHY. Thank you.

Senator Gramm, it is a delight to have you here, sir, and I am sorry for the delay.

STATEMENT OF HON. PHIL GRAMM, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator GRAMM. Thank you, Mr. Chairman. I am happy to have an opportunity to be here to endorse the nomination of my friend, Jerry Smith. I have known Jerry for a long time. I have known him as a political leader, a civic leader, a community leader, as a distinguished attorney.

He is supported, I might say Mr. Chairman, by the whole spectrum of the Texas delegation, including my colleague, Senator Bentsen, and Congressman Leland. He has been endorsed by the mayor and the full city council of Houston for this position on the fifth circuit. The mayor is a Democrat and 13 of the 15 city council members are Democrats.

Mr. Smith has a distinguished record both as a student of the law and as a practitioner. He received his degree in history from Yale University. He graduated from the Yale Law School. He then clerked for U.S. District Judge Hal Woodward, who was the chief judge of the Northern District of Texas.

He joined the law firm of Fulbright and Jaworski in 1973, becoming a partner in that distinguished law firm in 1981. He has held many positions of leadership in Houston and Harris County. He was chairman of the Civil Service Commission of the City of Houston from 1982 to 1984. He has served as city attorney since 1984. He was director of the Harris County Housing Authority.

In short, Mr. Chairman, he has been a leader for everything good in Houston and Harris County.

I strongly commend him to you. I think you will find his legal credentials are impeccable. I believe he will be an outstanding member of the Fifth Circuit Court of Appeals.

I would like to recognize his wife, if I may. Mary Jane, if you would stand up.

[Ms. Smith stood.]

Senator LEAHY. Ms. Smith, we are delighted to have you here.

Senator GRAMM. There has been some question raised concerning this appointment in a letter and you may hear later in testimony about it—some suggestion that Texas is trying to get more than its share of people on this fifth circuit court.

I know that you, Mr. Chairman, would never believe that Texas would be over-reaching in terms of trying to get more than its fair share.

Senator LEAHY. You would not be shocked to know that sometimes that rumor floats accordingly.

Senator GRAMM. And I wanted to put a silver bullet right between its eyes, Mr. Chairman, in concluding my testimony. There are 16 seats on the fifth circuit. The court deals with cases originating in Louisiana, Mississippi and Texas.

Of these three States, Texas has 68 percent of the population, and if this committee and the Senate approved Judge Smith and if we subsequently approve the appointment of Governor Treen of Louisiana, an appointment that was to be announced this morning, Texas will have 62.5 percent of the representation on the fifth circuit court.

In terms of population, I think that the appointment clearly fits within the constraint of 68 percent of the population. In fact, if one wanted to stretch it a little, the announcement this morning could just as well have gone to Texas.

So I hope the committee will not be in any way affected by this unfounded assertion of over-representation.

I thank you, Mr. Chairman.

Senator LEAHY. I thank you, Senator Gramm, and I apologize again for the delay.

I would like to hear from our distinguished colleague, Senator Warner, of Virginia, who is here. I should note that Senator Harkin of Iowa has also given very strong support to Justice Wolle and talked to me yet again this morning about him.

Senator Warner is here with Mr. Ellis. Mr. Ellis, I must note that we worked like mad to get you on the agenda for a couple of reasons. I am a part-time resident of Virginia during the Senate session, and a neighbor of Governor Robb's.

I was afraid to try to drive home because of the roadblocks he would set up to ask me about you. Then when I would seek refuge in the Russell Senate Office Building, it was only because I momentarily forgot that the distinguished senior Senator from Virginia, former Secretary of the Navy, has full control of the Russell Senate Office Building and he would tackle me coming in the door and say, "When are we getting on with the Ellis nomination?"

So only out of a sense of self-preservation and knowing that I could not escape either of these gentlemen, I yield now to Senator Warner.

STATEMENT OF HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Mr. Chairman, I thank you. You have quite accurately reflected the background. [Laughter.]

And I thank the distinguished ranking member, and members of both staffs have been exceedingly helpful.

Indeed, this is an outstanding nominee and there is a definite need for his services in the judicial circuit to which he is going. The Eastern District of Virginia has been without the benefit of its full quota of judges for some time, and I thank the Chair and the members of this committee for expediting this nomination.

Indeed, Senator Trible has provided a statement for the record.

[Prepared statement follows:]

STATEMENT BY SENATOR PAUL TRIBLE

INTRODUCING T.S. ELLIS, III

BEFORE THE SENATE JUDICIARY COMMITTEE

JULY 21, 1987

MR. CHAIRMAN:

IT'S A PLEASURE TO JOIN MY COLLEAGUE, SENATOR JOHN WARNER, IN PRESENTING TO THE COMMITTEE MR. TIM ELLIS.

MR. ELLIS HAS ALREADY COMPILED A LONG AND DISTINGUISHED RECORD. HE HAS SPENT NEARLY TWO DECADES IN PRIVATE PRACTICE. HE HAS LECTURED AT THE COLLEGE OF WILLIAM AND MARY, AND HAS PUBLISHED EXTENSIVELY ON SUBJECTS RANGING FROM ANTITRUST LAW TO THE TREATMENT OF HANDICAPPED INFANTS.

HE IS ALSO A FORMER NAVY PILOT, WHO RECEIVED HIS UNDERGRADUATE DEGREE FROM PRINCETON UNIVERSITY AND HIS LAW DEGREE FROM HARVARD LAW SCHOOL.

ALL OF THOSE EFFORTS HAVE BEEN MARKED BY STRONG COMMITMENT, HARD WORK, AND GREAT SUCCESS. I'M CERTAIN THAT MR. ELLIS WILL COMPILE A SIMILAR RECORD AS A FEDERAL JUDGE.

HE HAS RECEIVED THE HIGHEST RECOMMENDATIONS FROM A BROAD CROSS SECTION OF VIRGINIANS. I SHARE THEIR BELIEF THAT HE IS WELL-QUALIFIED TO SERVE ON THE FEDERAL BENCH, AND I URGE THE COMMITTEE TO ACT SWIFTLY AND FAVORABLY ON HIS NOMINATION.

Senator WARNER. Governor Robb offered to come today to join us, as did State Supreme Court Justice John Charles Thomas, who is, I understand, a classmate and longtime friend of the nominee.

Senator LEAHY. And the support of all of them will be noted here.

Senator WARNER. Thank you, Mr. Chairman. I will submit my statement for the record. I would, however, like to note the presence of members of his family. His mother, Mrs. Jacob Woodward, is here. His wife, Martha Ann, and his sons, Alexander and Parrish, are all here today.

Mr. Chairman, I have set forth in great detail in my statement the many reasons why I, and I am certain the Senate as a whole, will give their unqualified endorsement of this fine, outstanding American who is eminently well qualified to take on the heavy responsibilities of U.S. district court judge.

I thank the Chair and the distinguished ranking member.

Senator LEAHY. Well, I might just add on a personal note, John, the personal conversations I had with you and Chuck, both gentlemen I consider good friends and both gentlemen I admire greatly, had an awful lot to do in influencing me.

We will get back to Mr. Ellis' hearing, but thank you very much, Senator Warner, for being here today.

Senator WARNER. Thank you, Mr. Chairman.

Senator THURMOND. Mr. Chairman, if Senator Warner recommends him, there should not be any question.

Senator WARNER. Thank you very much.

Senator LEAHY. That is what he told us, Senator Thurmond.

[Prepared statement follows:]

STATEMENT OF SENATOR JOHN WARNER
BEFORE THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF THE NOMINATION OF T.S. (TIM) ELLIS, III
JULY 21, 1987
SD-226

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, IT IS MY GREAT PLEASURE TO COME BEFORE YOU TODAY TO INTRODUCE MR. T.S. "TIM" ELLIS, III TO THE SENATE JUDICIARY COMMITTEE FOR HIS CONFIRMATION AS A JUDGE FOR THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA.

MR. ELLIS IS JOINED TODAY BY FOUR MEMBERS OF HIS FAMILY- HIS MOTHER MRS. JACOB WOODARD, HIS WIFE MARTHA ANN, AND HIS SONS ALEXANDER AND PARRISH.

MR. ELLIS RECEIVED HIS UNDERGRADUATE DEGREE IN AERONAUTICAL ENGINEERING FROM PRINCETON UNIVERSITY, WHERE HE WAS A NROTC SCHOLARSHIP STUDENT.

HE THEN SERVED FOR SIX YEARS AS AN AVIATOR IN THE U.S. NAVY, AND WAS HONORABLY DISCHARGED HAVING ACHIEVED THE RANK OF LIEUTENANT.

HE GRADUATED MAGNA CUM LAUDE FROM HARVARD LAW SCHOOL AND THEN RECEIVED A DIPLOMA IN LAW FROM MAGDALEN COLLEGE AT OXFORD UNIVERSITY.

SINCE 1969, MR. ELLIS HAS BEEN ASSOCIATED WITH THE OUTSTANDING VIRGINIA LAW FIRM OF HUNTON AND WILLIAMS WHERE HE HAS DISTINGUISHED HIMSELF AS A TRIAL ATTORNEY, SPEAKER AND AUTHOR.

MR. ELLIS' EXTENSIVE LITIGATION EXPERIENCE IN BOTH STATE AND FEDERAL COURT COVERS A BROAD SPECTRUM OF THE LAW.

HE HAS ALSO BEEN INVOLVED IN NUMEROUS STATE AND FEDERAL ADMINISTRATIVE PROCEEDINGS.

HE HAS AUTHORED MANY PUBLICATIONS ON A VARIETY OF TOPICS, AND HAS LECTURED IN LAW AT SEVERAL UNIVERSITIES.

HIS SERVICES TO COMMUNITY GROUPS AND HIS CHURCH ARE EXTENSIVE, PARTICULARLY HIS EFFORTS TO HELP VIETNAM REFUGEES WHO LOCATED TO THE RICHMOND AREA.

FROM HIS EXPERIENCE AS A LITIGATOR, A PUBLISHED AUTHOR AND SPEAKER, THIS JUDICIAL NOMINEE POSSESSES THE IDEAL COMBINATION OF CREDENTIALS NECESSARY TO BE A SUPERIOR JUDGE.

MR. ELLIS IS A MAN OF PRINCIPLE WHO WILL CONTINUE TO DISTINGUISH HIMSELF ON THE FEDERAL BENCH JUST AS HE HAS THROUGHOUT HIS ENTIRE CAREER.

MR. CHAIRMAN, A CONFIRMATION HEARING IS, AS YOU KNOW, A MOST IMPORTANT PROCEEDING, AND THE COMMITTEE'S ADVICE TO THE SENATE IS ONE OF ITS MOST SERIOUS DUTIES.

I AM PROUD TO HAVE THE OPPORTUNITY TO INTRODUCE TO THE COMMITTEE A DISTINGUISHED VIRGINIAN WITH SUPERIOR CREDENTIALS, WHO HAS EARNED THE RESPECT OF HIS COLLEAGUES IN THE LEGAL COMMUNITY AS AN ATTORNEY AND A MAN OF INTEGRITY.

TIM ELLIS WILL BE A GREAT ASSET TO THE FEDERAL JUDICIARY.

THANK YOU MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE.

Senator LEAHY. Senator Johnston, we have just heard a great deal about Louisiana from the eyes of Texas. I thought maybe you might want to talk with us about that, too.

STATEMENT OF HON. J. BENNETT JOHNSTON, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator JOHNSTON. Yes, indeed, Mr. Chairman. Mr. Chairman, reluctantly but very strongly I am here to appear in opposition to the nomination of Mr. Smith to be judge of the fifth circuit. This has nothing to do with party; it has nothing to do with philosophy. It has to do with numbers.

Mr. Chairman, there are 16 seats on the fifth circuit at the present time. If we divided those seats according to filings—that is, the number of cases that originate in Louisiana, Texas and Mississippi, the three States, then Louisiana would have six judges if you round off—well, actually, 5.8 judges. Mississippi would have 1.4 and Texas would have 8.8. Rounding off, that would be six for Louisiana, one for Mississippi, and nine for Texas.

Now, Mississippi already has two and we are not trying to take Mississippi's away from it. But for the last 3 years, Mr. Chairman, we have been constantly talking to the Attorney General. Russell Long and I wrote, we called, we have implored that Louisiana is entitled, we think, to six judges, but at least to five judges.

This would bring Louisiana to four judges and Texas to ten when our filings support not five but six judges. Now, Mr. Chairman, that is not fair. Judges do not represent people; they represent cases, they represent case filings. That is the way the courts work. That is the way the lawyers work. That is the way the representation is.

It is simply not fair, and I can tell this committee I will oppose it, and strongly oppose it, as did my colleague, as did Russell Long before me. I mean, every circuit that I know of goes by case filings, and in my statement, a copy of which I ask to put in the record, we detail those filings.

Senator LEAHY. It will be made part of the record.

Senator JOHNSTON. As a matter of fact, the proportion for Louisiana is going up, not down. It is up this year over last year and it probably will be up next year over this past year.

So I implore this committee to be fair because we ought to be entitled, as I say, to six judges, but at least to five, and four would be an outrage. It is not an outrage that is going to take place without my opposition, and my very strong opposition.

So I urge this committee to look at that in a very careful and dispassionate manner.

Senator LEAHY. Thank you very much. I appreciate your comments and we will keep that in mind. In fact, at some point I would like to perhaps sit down with you and your colleague from Louisiana and the two Senators from Texas so that we may chat just a bit about this.

Senator JOHNSTON. Very good. Thank you, Mr. Chairman. I appreciate it.

Senator LEAHY. Thank you, Senator Johnston. It is always good to have you here.

[Prepared statement follows:]

95-823 0 - 89 - 2

STATEMENT OF SENATOR J. BENNETT JOHNSTON

MR. CHAIRMAN:

I APPRECIATE YOUR GIVING ME THE OPPORTUNITY TO COME BEFORE THIS COMMITTEE TO TESTIFY ON A VERY IMPORTANT MATTER WITH RESPECT TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS.

AT THE OUTSET, LET ME STATE THAT MY CONCERN IS SPECIFICALLY ON THE UNDERREPRESENTATION OF THE STATE OF LOUISIANA ON THE U.S. FIFTH CIRCUIT COURT OF APPEALS. I COMPLETELY DISAVOW ANY CONCERN ABOUT THE ABILITY OR PERSONALITY OF MR. JERRY SMITH OF TEXAS, WHO IS NOW BEFORE THE COMMITTEE FOR CONFIRMATION TO THE FIFTH CIRCUIT.

MR. CHAIRMAN, AS A RESULT OF THE BANKRUPTCY ACT OF 1984, THERE ARE CURRENTLY TWO VACANCIES THAT EXIST ON THIS COURT. ACCORDING TO THE PRESENT CASE FILINGS IN THIS CIRCUIT, IT IS MY STRONG BELIEF THAT A LOUISIANA RESIDENT SHOULD BE NAMED TO BOTH OF THESE JUDGESHIP POSITIONS. I HAVE CONTACTED PRESIDENT REAGAN AND U.S. ATTORNEY GENERAL MEESE TO EXPRESS MY DEEP CONCERN ABOUT THIS MATTER.

WHILE I HAVE NOT UNDERTAKEN A FULL REVIEW TO DETERMINE THE CORRELATION BETWEEN CASE FILINGS AND THE REPRESENTATION OF STATES WITHIN THE CIRCUIT COURTS IN THE U.S., I DO, HOWEVER, BELIEVE

FILINGS AND ANTICIPATED FILINGS ARE ESEENTIAL IN DETERMINING THE JUDGESHIP NEEDS OF A GIVEN STATE. I DO NOT MEAN TO SUGGEST THAT CASELOAD PROPORTION SHOULD BE THE ONLY LEGITIMATE CRITERION. THERE SHOULD BE OTHER LEGITIMATE CRITERIA INCLUDING POPULATION. NEEDLESS TO SAY, EVERYTHING OF COURSE IS SECONDARY TO THE CHIEF GOAL OF FINDING THE BEST POSSIBLE CANDIDATE.

IN 1986, 3,037 CASE FILINGS WERE REPORTED IN THE FIFTH CIRCUIT. THIS NUMBER EXCLUDES CASES FILED IN THE FIFTH CIRCUIT THAT ORIGINATED WITH FEDERAL AGENCIES. OF THE 3,037 FILINGS, 1,093 CAME FROM LOUISIANA, 269 FROM MISSISSIPPI, AND 1,675 FROM TEXAS. ON A PERCENTAGE BASIS, LOUISIANA RECEIVED 36% OF THE FILINGS, MISSISSIPPI 8.9%, AND TEXAS 55.1%.

IF THE 16 JUDGESHIPS ON THE COURT WERE DIVIDED IN ACCORDANCE WITH THE 1986 FILINGS, LOUISIANA WOULD BE REPRESENTED BY 5.8 JUDGES, MISSISSIPPI BY 1.4, AND TEXAS BY 8.8. MISSISSIPPI ALREADY HAS TWO JUDGES AND TEXAS HAS NINE. AS YOU CAN SEE, LOUISIANA IS CLEARLY UNDERREPRESENTED WITH ONLY THREE JUDGES. IF PROPORTIONAL REPRESENTATION EXISTED, LOUISIANA WOULD BE ENTITLED TO 5 (OR 6) JUDGESHIPS.

THEREFORE, ACCORDING TO PRESENT FILINGS, THE VACANT JUDGESHIPS SHOULD GO TO LOUISIANA. EVEN IF THE JUDGESHIPS ARE CORRECTLY PLACED, TEXAS WOULD CONTINUE TO HAVE A 9 TO 7 MAJORITY

ON THE PERMANENT THREE-STATE COURT OF THE FIFTH CIRCUIT.

ACCORDING TO JUDGE CHARLES CLARK, CHIEF JUSTICE OF THE FIFTH CIRCUIT, IF THE PENDING NOMINATION IS CONFIRMED BY THE SENATE, 10 OF THE 16 POSITIONS ON THE COURT WILL BE FILLED BY RESIDENTS OF THE STATE OF TEXAS. HE FURTHER ADDS, "THIS ABNORMAL ORIENTATION OF THE JUDGESHIP POSITIONS OF THIS COURT TO THAT STATE IS DISPROPORTIONATE TO FILINGS FROM THE THREE STATES OF THE CIRCUIT AND CONSTITUTES A BASIC LONG-RANGE ERROR."

MOREOVER, I BELIEVE IN CREATING A COURT SPLIT 10-4-2 IS VERY WRONG ADMINISTRATIVELY AND INSTITUTIONALLY. IT DESTROYS ANY SEMBLANCE OF BALANCE ON THE JUDICIAL COUNCIL OF THE CIRCUITS AND, IN CONTROVERSIAL CASES, CLEARLY COULD AFFECT THE PERCEPTION OF JUSTICE BY THE PEOPLE OF LOUISIANA. THE APPEARANCE TO LITIGANTS OF ONE-STATE DOMINANCE IS ONLY ENHANCED BY THE FACT THAT THE FIFTH CIRCUIT CONTAINS ONLY THREE STATES.

AS I AM SURE WE CAN ALL AGREE, THE PRESIDENT HAS THE PREROGATIVE OF NOMINATING A PERSON OF HIS PARTY TO FILL THE VACANCIES ON THE CIRCUIT COURT. I AM NOT CONCERNED ABOUT THE PARTY AFFILIATION OF THE NOMINEE. I AM CONCERNED THAT LOUISIANA IS STATISTICALLY ENTITLED TO THE VACANT JUDGESHIPS ON THE FIFTH CIRCUIT.

IN MANY INSTANCES, WE HAVE FOUND THAT ONCE AN APPOINTMENT TO THE FIFTH CIRCUIT IS MADE FROM A PARTICULAR STATE, THAT STATE CONTINUES TO HAVE PREFERENCE ON THAT SEAT. IF BOTH OF THE NEW SEATS ARE FILLED BY TEXAS RESIDENTS, I AM SURE IT WILL BE DIFFICULT, IF NOT IMPOSSIBLE TO FILL ANY FUTURE VACANCIES OF THESE POSITIONS WITH A LOUISIANA RESIDENT. THIS IS BLATANTLY UNFAIR IN VIEW OF WHAT THE STATISTICS REFLECT WITH REGARD TO CASE LOADS OF THE RESPECTIVE STATES AT THIS TIME.

AT THIS POINT, I AM NOT AWARE OF ANY CIRCUIT WITH DEMOGRAPHICS SIMILAR TO THE FIFTH CIRCUIT THAT HAS SUCH DISPARITY IN REPRESENTATION. IN THE ELEVENTH CIRCUIT, FOR EXAMPLE, THERE ARE THREE STATES REPRESENTED WITH THE FOLLOWING POPULATIONS (IN MILLIONS) -- ALABAMA 4.0; GEORGIA 6.1; AND FLORIDA 11.7. BY COMPARISON, THE FIFTH CIRCUIT HAS THE FOLLOWING -- MISSISSIPPI 2.6; LOUISIANA 4.5 AND TEXAS 16.7. (POPULATION FIGURES AS OF JULY 1, 1986)

HOWEVER, THE JUDGESHIP SPLIT IN THE ELEVENTH CIRCUIT IS GEORGIA 5, FLORIDA 4, AND ALABAMA 3. THIS IS CLEARLY MORE EQUITABLE THAN THE CURRENT SITUATION OF THE 9-3-2 SPLIT IN THE FIFTH CIRCUIT.

I WOULD ADD FURTHER ON THIS POINT THAT IT IS QUITE OBVIOUS THAT A STATE WITH TWENTY MILLION RESIDENTS WILL HAVE MORE

LITIGATION THAN A STATE WITH ONE MILLION RESIDENTS. IT IS EQUALLY OBVIOUS THAT THE LARGER STATE WILL HAVE MORE FEDERAL LITIGATION THAN THE SMALLER STATE. BUT THERE SIMPLY IS NO CORRELATION BETWEEN POPULATION AND LITIGATION OTHER THAN THIS RUDIMENTARY ONE. THIS FACTOR IS ITSELF REFLECTED BY FILINGS. THIS IS WHY THE FEDERAL JUDICIAL CENTER AND THE JUDICIAL CONFERENCE BOTH CONTINUE TO USE FILINGS AND ANTICIPATED FILINGS IN DETERMINING JUDGESHIPS.

IN SUM, I STRONGLY BELIEVE THAT IF TEXAS IS ASSIGNED EVEN ONE NEW JUDGESHIP PAST ITS ALREADY MAJORITY NUMERICAL ENTITLEMENT, IT CREATES AN IMPROPER APPEARANCE ON AN ONGOING INSTITUTION THAT IS INTENDED TO SURVIVE FUTURE GENERATIONS. IN SELECTING CANDIDATES TO FILL THE VACANCIES ON THE FIFTH CIRCUIT, I HOPE THE PRESIDENT AND THE U.S. ATTORNEY GENERAL WILL BE COGNIZANT OF THE NEED TO STRONGLY CONSIDER QUALIFIED RESIDENTS OF THE STATE OF LOUISIANA.

Senator LEAHY. Would Jerry Smith please come forth?

Mr. Smith, would you raise your right hand? Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SMITH. I do.

Senator LEAHY. Before you sit down, would you please introduce members of your family who are here?

TESTIMONY OF JERRY E. SMITH, HOUSTON, TX, TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

Mr. SMITH. Yes, certainly, Senator. My wife, Mary Jane, has been introduced by Senator Gramm and I am pleased to recognize her again. We have two lovely children who unfortunately could not be here today. We have a daughter, Ruth Ann, who is eight, and our son, Clark, is six. We are very proud of them and are sorry they could not join us here today.

Senator LEAHY. With a crowded room, at that age they are probably just as happy not to be here. Ms. Smith, I welcome you here.

Did you have any kind of an opening statement that you wished to make?

Mr. SMITH. I did not, other than to introduce my wife and I believe that has been taken care of.

Senator LEAHY. Thank you.

Senator Thurmond, before I go to questions of Mr. Smith, did you have any opening statement you wished to give on this nomination?

Senator THURMOND. I do not have an opening statement, Mr. Chairman.

Senator LEAHY. Thank you.

Mr. Smith, a recent article in the Houston Chronicle—and I am sure you anticipate this question because there has been some discussion of it prior to your coming here—concerning your nomination included the following passage:

> In 1977 Smith, while Harris County GOP chairman, denounced participants in the federally-sponsored International Women's Year Conference in Houston as "a gaggle of outcasts, misfits and rejects." Federal funds, he complained, were being used to "expound their perverted views."

Now, does that excerpt accurately quote your remarks in 1977?

Mr. SMITH. Yes, as far as I know it does, Senator.

Senator LEAHY. Well, could you tell us under what circumstances you made those remarks?

Mr. SMITH. Yes, I will be pleased to. Senator, those remarks were made at the end of a fairly lengthy speech that I was giving to the Harris County Republican Executive Committee. It was an acceptance speech upon my election as chairman of that committee, as county chairman.

The remarks were in anticipation of the beginning of the IWY conference which was to take place in Houston about 3 days later. As I have said in the past, and I am certainly willing and eager to repeat it, I have regretted the remarks. I have apologized for them and they were certainly ill-chosen and were not the thrust of the message that I was intending to convey to that committee.

Senator LEAHY. Well, the article also said that you refused to make a requested apology. Is that so?

Mr. SMITH. There was a request a day or two later, Senator, and I did not retract my remarks at that time. I have since indicated that the remarks were unfortunate. It was 10 years ago, and while I am certainly responsible for those remarks and am willing to be responsible for the things that I have said and done, I have since recognized that they were not responsible remarks.

Senator LEAHY. So today you disavow those remarks?

Mr. SMITH. I do disavow them, and I might add, if I may, that since that time it has been my privilege to work with on a professional basis many of the women who attended that conference and I have certainly gained a great deal of respect for them as individuals and certainly would not have intended to have disparaged them as I apparently did in 1977.

Senator LEAHY. I think you subsequently stated that your principal objection to the International Women's Year meeting in Houston was that Federal funds were used to defray some of the costs. Is that correct?

Mr. SMITH. Yes.

Senator LEAHY. And along that line, did you recently state that your comments were motivated by the fact that "a bunch of male chauvinists cannot get Federal funds to hold a conference?"

Mr. SMITH. Well, it was motivated by the fact that Federal funds, in my view, should not be used selectively to promote one interest group over another, and that was part of the message that I was trying to convey, but unfortunately that was obscured by my other harsh and, I think, ill-designed comments.

Senator LEAHY. Would you think the International Women's Year Conference is analogous to a meeting of a bunch of male chauvinists?

Mr. SMITH. I think that conference was a sincere desire on the part of some very dedicated women to carry forth their views on some issues that were certainly important to them. Again, since getting to know some of the people who were associated with that conference, I realize not only the sincerity of their cause but the dedication of their effort. Many of them are very fine people and I have had a privilege to get to know them.

Senator LEAHY. That same Houston Chronicle article said that "A year later, Smith characterized the League of Women Voters as a plague of women voters." Is that a correct quotation?

Mr. SMITH. Yes. The quotation, I believe, is accurate, Senator. It actually was not a year later. It was in the next calendar year, but it was only 2 or 3 months later. That apparently—I do not independently recall that, although I do not challenge the fact that it was made.

Apparently, that was printed in a county Republican Party newsletter during my chairmanship in early 1978.

Senator LEAHY. Do you consider the League of Women Voters a plague or a legitimate organization?

Mr. SMITH. I do not. It is a legitimate organization. In particular, that organization has distinguished itself in recent years by holding presidential debates and conducting other programs of a civic nature that I think are to be commended.

Senator LEAHY. As you can well understand—I think the staff has probably notified you of this—we have had some concern expressed to this committee because of these things—concern whether as a judge you would be protective of women's rights in an appropriate case, whether you would be cognizant of the trends in the law toward protection of women's rights. These past remarks raise these concerns.

Now, it is only fair, because some have raised those issues, to do what I have tried to do in this committee when anybody has raised a point about a nominee, a point that may be raised, again, between now and the time the nominee's nomination comes either to the full committee or possibly the floor: to give the nominee a chance to respond.

You do not get a chance to respond during a committee meeting. You do not get a chance to respond in a debate on the floor. How would you respond to such criticism?

Mr. SMITH. Senator, I can certainly understand why the concerns have been raised based upon the statement from 1977. As I have said before, I am certainly responsible and should be responsible for the things I have said and done, but I hope and certainly trust that this committee will look at my entire career, both public and private, and look at these things in the context of some other things that I have done.

If I may go into a couple of things——

Senator LEAHY. Would you, please.

Mr. SMITH. I certainly understand that the committee may have specific questions. I am pleased to answer them. In 1982, Mayor Whitmire, who is certainly, I might point out, one of the active women's advocates who was in favor of the meeting that occurred in 1977 and was one of those people whom I inadvertently would have referred to, I suppose—Mayor Whitmire nominated me as a member of the Civil Service Commission of the City of Houston, which is a high position in the city because the Civil Service Commission does have a great deal of responsibility over the city's personnel system, and particularly over disciplinary actions that are taken by department heads against city employees.

At the time that I was nominated, the concerns that you have very properly raised were expressed in Houston. They were aired publicly and discussed and there were, frankly, some women's advocates who had some real doubts about whether I would be fair to women's issues, would have concern and sensitivity to those issues, and they expressed those doubts at the time.

I was confirmed by the city council to the Civil Service Commission and served there for 2 years. I am pleased to say that after serving for 2 years and then being nominated as city attorney of the city, also by Mayor Whitmire, there were no voices in opposition, and those who had expressed doubts before were pleased at that time to say that their doubts had been erased; that they had observed closely my service on the Civil Service Commission and were pleased that it had been even-handed and fair.

To give you one example, during my chairmanship the Civil Service Commission took a very strong stand against sexual harassment of women on the job. We all know that that is a very important women's issue, one that I believe in very strongly, in a govern-

mental body or private body that sexual harassment against women is wrong.

Our commission spoke out strongly against that and made sure that those supervisors and others in the workplace who were guilty of those violations were severely disciplined, and we not only issued orders on that, but made public statements to indicate that it would not be tolerated any longer.

We were involved in a number of cases in which female employees were mistreated in one way or another by supervisors and we, again, acknowledged that, investigated it, and made decisions that apparently were to the liking of those women's advocates who were looking closely at what we were doing.

As city attorney—and I do not mean to make this overly long, but as city attorney I believe that you will find after checking with women on my staff—and I have a staff of approximately 60 very fine attorneys who work for me now—I think you will find that the number of women attorneys has increased significantly, but not only that.

Women attorneys on my staff have been given a higher degree of responsibility than ever before. I have recognized women as equals professionally and have given them every challenging assignment that I could so that they could advance within our department.

One specific example of that that I would like to point out, because I am proud of it, is that I appointed a woman as a section chief in the Houston Legal Department. That may not seem particularly significant, except that in the many decades that that department has been in existence, no city attorney ever before had appointed a woman to a position as high as section, which is the equivalent of an assistant director position.

I did that on the basis of merit. We had a very deserving woman who has done a fine job as section chief since I appointed her. I did that, of course, to recognize her merit, and she fully deserved it, but also to indicate to the women in my department and to others who may some time wish to work in that department that we put a lot of emphasis on advancement of women professionally in that department.

I could name, and I will if you wish, but I will not go into it and take your time, other areas of high responsibility that I have given women in the department that they did not have before.

And I hope and I believe that reflects that I have been even-handed and sensitive to women's needs both on the Civil Service Commission and as city attorney.

Senator LEAHY. Thank you. Mr. Smith, the administration has taken a public posture and sent their people out to talk to the press to say that somehow this committee is not moving fast enough on their nominations.

There are a couple of things that the administration itself apparently is not aware of. The position to which you have been nominated was created by legislation enacted July 10, 1984. That was 3 years ago. Your nomination was received by the Senate about 7 weeks ago, nearly 35 months after the position was created.

As in the case of the Pennsylvania vacancies, the administration may not be aware of this or may have overlooked the position

when it came through. Do you know why it took them nearly 3 years to nominate you?

Mr. SMITH. I am unfortunately not privy to all those details, Senator. I am sorry. I do not——

Senator THURMOND. Speak a little bit louder, Mr. Smith.

Mr. SMITH. I am sorry. Excuse me, Senator.

I am just not familiar with what had ensued during all those 3 years, so I am afraid I do not know.

Senator LEAHY. I was just curious. You know, I just come from a small town up my way, so we do not get really involved in some of these things. I did not understand it myself.

Mr. SMITH. I am most grateful——

Senator LEAHY. We always thought when people talk about others not moving fast enough that they would not have a 35-month delay in their own backyard. I thought maybe it was just something the administration might have overlooked, and I just thought if we brought it up here that it might bring it to their attention.

I am going to submit a number of other questions for the record which I would like you to work with the staff on.

[The aforementioned material follows:]

SUPPLEMENTAL QUESTIONS
Jerry E. Smith

COMMENTS ON INTERNATIONAL WOMEN'S YEAR CONFERENCE

Question No. 1: Do you believe that your remarks about the International Women's Year conference in Houston, as reported in the Houston Chronicle story discussed at the confirmation hearing, were taken out of context?

The remarks were reported accurately. They were "out of context" only in the sense that they were a small part of a lengthy speech and were an unfortunate afterthought rather than being intended as a major part of those remarks.

Question No. 2: Do you believe that federal funding for the International Women's Year conference is equally appropriate, or equally inappropriate, as would be federal funding for a conference of male chauvinists?

Equality for women is a laudable goal, while championing male chauvinism would not be. To that extent, federal funding for a conference to promote women's rights would be more justified than funding of a conference to foster male chauvinism.

Question No. 3: You testified that you refused to retract your remarks a day or two after they were made, but that you subsequently apologized for them. Approximately when, and under what circumstances, did you first publicly apologize for these remarks?

I do not recall specifically when I first recognized that the remarks were inappropriate, but on many occasions when the matter has been raised, especially in connection with my being considered for a federal judgeship, I have been questioned by members of the public media, by members of women's rights groups, and others, concerning my 1977 re-

marks. I have stated repeatedly that I regret the remarks; that they were ill-conceived and should not have been made; that I offended persons whom I did not intent to offend; and that the 1977 remarks do not represent a bias on my part against equal rights for women. My statements have been apologetic in tone and intent. Moreover, I have attempted to assuage the impact of my 1977 remarks by my actions toward women since that time, such as my conduct as Chairman of the Civil Service Commission and as City Attorney.

LEAGUE OF WOMEN VOTERS

Question: Please furnish a copy of the County Republican Party newsletter in early 1978 in which the League of Women Voters was referred to as the "Plague of Women Voters."

Unfortunately, I do not have a copy of the newsletter in question.

PERSONNEL PRACTICES

Question No. 1: How many section chiefs are there in the Houston City Attorney's Office? How many are women?

There are seven Section Chiefs, of whom one is a woman.

Question No. 2: On how many occasions since you became City Attorney have you had the opportunity to choose a section chief? How many times have you chosen a woman for that position? When did you first choose a woman for this position? Please list the seetions (headed by section chiefs) into which the City Attorney's office is divided, indicating those for which you have chosen a woman as section chief.

I have promoted, to Section Chief, three attorneys who had not previously held that position. Of those, one was a woman. (Additionally, one male attorney who was already a Section Chief was transferred from one section

to another.) The woman who was appointed Section Chief was selected for that position in mid-1986 but did not assume the position until early 1987. She is now Section Chief of the Corporate Section. The sections headed by men are: Municipal Courts, Civil, Property, Revenue, Labor, and Trial. (The Property and Revenue Sections are scheduled to be merged, with a corresponding reduction in the number of male Section Chiefs.)

Question No. 3: Please describe other highly responsible assignments in the City of Houston legal department for which you have chosen women.

a. I selected a woman to replace a man as the City's chief in-house lobbyist in the 1985 Texas Legislature. (In 1987, she was replaced by another woman.)

b. Two women attorneys are assigned to represent the City before the Texas Public Utility Commission and are in charge of trying the City's cases there.

c. I created a deed restriction enforcement team and designated a woman attorney to manage and direct the City's deed restriction enforcement program.

d. A woman attorney is in charge of the legal aspects of the City's minority-owned/women-owned business enterprise program.

e. A woman attorney is assigned to represent the Legal Department before the City's pension boards.

f. On numerous occasions, women attorneys appear before City Council to represent the Legal Department concerning various matters.

g. A woman attorney is in charge of meeting the City's obligations under the Texas Open Records Act.

h. Women attorneys regularly represent the City in court and before various boards and commissions.

(Women attorneys were involved in some of these matters prior to my arrival.)

Question No. 4: As of the most recent date for which records have been compiled, how many attorneys work for you as City Attorney? How many of these are women? How many of your office's attorneys hold the rank of Senior Assistant City Attorney or First Assistant City Attorney? How many of these Senior or First Assistants are women?

As of July 1987, 60 attorneys work for me as City Attorney. Of these, 22 are women and 38 are men. (One new woman attorney is tentatively scheduled to begin work in September 1987, which would increase the number of women to 23.) There is one First Assistant City Attorney, a man. There are seven Senior Assistant City Attorneys, of whom two are women.

When I became City Attorney, there were 58 attorneys working for me, of whom 17 were women and 41 were men. Thus, the number of women has increased by 29% as of July 1987, while the number of men has decreased by 7%.

LITIGATION EXPERIENCE

Question No. 1: According to your response to the Committee questionnaire, you have tried three jury cases to a verdict in your career. You were also asked to describe your "ten most significant litigated matters". None of your descriptions of these cases indicate that you tried them to a verdict. Please provide further details about your trial experience. What kind of cases did you try to a verdict? In what courts were the trials held? When did these trials take place? Who was your opposing counsel in these cases?

Of the cases which I tried to a jury verdict, two were tort cases resulting from vehicular collisions and were tried before, respectively, the Honorable James Wallace (215th Judicial District Court, Harris County, Texas) and the Honorable William A. Miller, Jr. (County Civil Court-at-Law No. 2, Harris County, Texas). The third trial was a contract suit by a claimant contesting a denial of coverage on an automobile property-damage insurance policy and was tried before the Honorable Presley E. Werlein, Jr. (165th Judicial District Court, Harris County, Texas). The trials in question were in approximately 1978-80. I do not recall the names of opposing counsel, as the cases were not appealed, the files are closed, and I have not retained any papers that would indicate the names of opposing counsel or the exact trial dates.

Question No. 2: Two of the cases which you describe as your most significant, Dorchester Gas Producing Co. v. Department of Energy and Amoco Production Co. v. Department of Energy, were declaratory judgment actions challenging DOE's interpretation of certain gas pricing regulations. You state in each case that you were "the second-ranking attorney representing Exxon Corporation (excluding in-house counsel)." How lengthy were the proceedings in District Court in these cases? How much of the argument did you present? Were any witnesses examined in court? Was there a trial in these cases?

In the Dorchester and Amoco cases, there was no trial on the merits, as both cases were decided on motions for summary judgment; no witnesses were examined in court. In Dorchester, I presented oral argument on two major issues, at two separate hearings on motions for summary judgment. Attorneys from at least three firms presented oral argument on various issues at those hearings.

The first summary judgment point which I argued in Dorchester was the so-called "ethane exclusion" question, a major issue that had a value to the plaintiffs in excess of $100 million. That issue is discussed at 582 F.Supp. 923-25 and 752 F.2d 665-69. The hearing at which this issue was argued was several hours in length (with presentations by several attorneys representing various plaintiffs and the Department of Energy). I estimate that the ethane exclusion issue (on which I alone argued for the plaintiff companies) encompassed approximately 45 minutes to one hour of that time, including argument by the Department of Energy, and that my portion of that argument consumed approximately two-thirds of that time.

The second issue which I argued in Dorchester was the one-house veto issue stemming from Immigration & Naturalization Service v. Chadha, 462 U.S. 919, 103 S.Ct. 2764 (1983). That major issue, in which the companies sought to have the Emergency Petroleum Allocation Act of 1973 and the Energy Policy and Conservation Act declared unconstitutional on the ground that they contained one-house legislative veto provisions, is discussed at 582 F.Supp. 936-37 and 744 F.2d 102-117. I alone presented the oral argument for the plaintiffs on that issue in the district court. I estimate that the argument on that issue (including argument by the Department of Energy) con-

sumed approximately one hour of a several-hour hearing that dealt with various issues raised in the motions for summary judgment.

In the Amoco case, a substantial portion of the court's and the attorneys' time was spent on complex discovery disputes on issues such as executive privilege, attorney-client privilege, relevance, and the work-product exclusion. Hearings were held at which attorneys representing various plaintiffs orally argued discovery issues. At one of those hearings I presented, on behalf of the plaintiff companies, the oral argument on a discovery dispute. I estimate that that argument took approximately 40 minutes (including argument by the Department of Energy).

Question No. 3: In the case of Industrial Investment Development Corp. v. Mitsui and Co., your firm represented the defendants. You state in your questionnaire response that you were "heavily involved in this case constantly from ... 1975 through ... 1984." Did you appear in court on this case? If so, what was your role? This case went up to the Fifth Circuit twice on appeals of the trial court's grant of summary judgment. Did you present oral argument to the Fifth Circuit on either occasion? Your name does not appear at all in the official report of the second appeal of this case, in 1982. How were you involved with the case at that point? You state that after you left private practice, the case went to trial. Was there any trial in the case while you were involved with it?

The Industrial Investment Development Corp. case did not entail any trials or district court hearings while I was with Fulbright & Jaworski. Thus, I did not appear in court on the case, nor did I present oral argument (although I worked on all of the appellate briefs). I did, however, expend more than 3,000 hours on the case between 1975 and 1984.

I am puzzled by the portion of this question that asserts "Your name does not appear at all in the official report of the second appeal of this case, in 1982."

As far as I am able to determine, my name appears as counsel in all of the official reports of this case in which counsel are listed, including the 1982 Fifth Circuit opinion that appears at 671 F.2d 876 (counsel listed at 671 F.2d 880). Attached hereto are copies of the following official reports of the case, listing my name among counsel for the defendants: 594 F.2d 48 (1979) (first appeal); 671 F.2d 876, 880 (1982) (second appeal); and 704 F.2d 785 (1983) (remand of second appeal). Specifically in regard to the second appeal (No. 81-2175), I was closely involved with the drafting, revision and finalization of the appellees' brief which we filed in July 1981, and my name appears thereon.

Question No. 4: You list four cases in which it appears that you got involved only on the appellate level, after trial had been completed. These are Hill v. City of Houston, Ruiz v. Estelle, Dougherty v. Continental Oil Co., and the Agency Rent-A-Car case. Did you present the oral argument on the appeals in any of these cases?

No.

Question No. 5: You listed the Building and Construction Trades Council case, in which you were involved as City Attorney for Houston. There were two appellate decisions in this case. Did you present oral argument in these appeals?

No. However, I presented oral argument at two separate hearings in district court (hearing on motion to dissolve temporary restraining order and hearing on motion for temporary injunction) and participated in witness interrogation at one of those hearings.

Question No. 6: The last "significant case" you listed was City of Houston v. Duncan. You wrote that "this particular case, standing alone, is not particularly significant. It is, however, representative of a deed restriction enforcement program upon which I have placed special emphasis as City Attorney." With regard to your participation in this case, you wrote that you "appeared personally in the trial

court and presented a lengthy oral argument explaining the ... importance of [the deed restriction enforcement] program to the City as a whole." It appears that the trial in this case lasted four days -- June 2-5, 1986. On what day did you make your "lengthy oral argument"? How lengthy was your argument? Did you participate further in the trial, either on the day you made the argument or any other trial day? If so, please state what further role you played in the trial. What was the Duncan case about? In what way was Mr. Duncan alleged to have violated the deed restrictions applicable to his property?

I have reviewed this case further, to determine in more detail the extent of my participation, which consisted only of presenting the City's opening statement on June 2, 1986. I have confirmed with the trial judge that my opening argument was at least twenty minutes, and probably longer, in duration. Although such an argument might not always be considered lengthy in a complex jury case, this argument was lengthy in the context of a relatively simple deed restriction case tried without a jury. The argument went beyond the facts of the case to explain to the court the City's deed restriction enforcement program, the importance of that program in preserving neighborhoods (especially those that cannot afford their own attorney) in a city without zoning, and the need for recovering attorneys' fees as an integral part of that program.

The Duncan case was brought by the City of Houston to enjoin the violation of deed restrictions by the defendant. Specifically, Mr. Duncan was shown to have been operating a vehicle transmission repair service at his residence, in violation of a deed restriction that prohibited commercial use of the property. This case is representative and typical of the kind of cases which the City files as part of its deed restriction enforcement program, to protect residential neighborhoods from deterioration caused by commercial encroachment.

Question No. 7: Have you ever argued a case before the Fifth Circuit Court of Appeals, to which you have been nominated?

No.

TIES TO LOUISIANA

Question No. 1: Are you admitted to practice before the Louisiana courts? Are you a member of any Louisiana bar association?

No; no.

Question No. 2: Have you ever tried a case or been involved in other litigation before a Louisiana state or federal court? If so, please identify the case, describe it briefly, and state your specific role in the litigation.

I have never appeared in court in Louisiana. However, in approximately 1974-75 I did extensive work on a pair of cases in which I and other attorneys at Fulbright & Jaworski represented Olin Chemical Corporation in litigation against Continental Oil Company. The dispute involved the enforceability of a long-term contract whereunder Continental was to supply large quantities of natural gas to Olin's ammonia plant in Lake Charles, Louisiana, for use as both fuel and feedstock. Suits were filed in state court in both Lake Charles, Louisiana (Calcasieu Parish) and Houston, Texas (Harris County). At issue was the question of whether Continental could be released, on the basis of "commercial impracticability" or some similar doctrine, from its obligation to supply gas at the very low contractual price when the market price of natural gas had risen dramatically. The dispute involved several hundred million dollars in value, over the life of the contract.

My role in this litigation was primarily to conduct legal research and to assist in document review, document production, and the answering of extensive interrogatories, all under the direction of B. J. Bradshaw of Fulbright & Jaworski. I made numerous visits to Louisiana during the course of the litigation and worked closely with Olin's Louisiana counsel, Cicero C. Sessions, Curtis R. Boisfontaine, and Thorne Harris of the New Orleans firm of Sessions, Fishman, Rosenson, Boisfontaine & Nathan.

ASSOCIATIONS WITH PAC'S

Question: You have been an officer of several political action committees. You were the Assistant Treasurer of the Freedom Fund; Treasurer of the Committee for the American Family; and General Counsel of the Houston Political Action Committee (HouPAC). Do you continue to hold any of these offices? If so, do you intend to resign from that position before the Senate acts on your nomination?

I do not continue to hold any of these offices. I have now severed all connections with these PAC's.

NOMINATION CHRONOLOGY

Question No. 1: In response to the supplemental Committee questionnaire, you stated that the first action taken on your nomination, after you expressed an interest in being considered, was a request from the Justice Department for you to come to Washington for an interview. When did that interview take place?

July 1986.

Question No. 2: You further stated that "a few months later, I was told by the Justice Department that I had been tentatively selected for a Fifth Circuit vacancy ... " When were you told that?

Early February, or possibly late January, 1987.

Supplemental Questions
Jerry E. Smith

AFFIDAVIT

I, Jerry E. Smith, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

8-20-87
(DATE)

(NAME)

Blanche B. Weaver
(NOTARY)

BLANCHE B. WEAVER
Notary Public, Harris County, Texas

claim for 1969 and 1970 was correct and is AFFIRMED.

INDUSTRIAL INVESTMENT DEVELOPMENT CORPORATION, Indonesia Industrial Investment Corporation, Ltd., and Forest Products Corporation, Ltd., Plaintiffs-Appellants,

v.

MITSUI & CO., LTD. and Mitsui & Co. (U.S.A.), Inc., Defendants-Appellees.

No. 78-1775.

United States Court of Appeals, Fifth Circuit.

April 25, 1979.

Rehearing and Rehearing En Banc Denied July 6, 1979.

Damages were sought for claimed Sherman Act violations arising out of alleged anticompetitive practices concerning lumbering operations. The United States District Court for the Southern District of Texas, Ross N. Sterling, J., granted defendants' motion for summary judgment, and plaintiffs appealed. The Court of Appeals, Charles Clark, Circuit Judge, held that the act of state doctrine did not preclude trial of Sherman Act claims brought by American corporation and its two Hong Kong subsidiaries against a Japanese corporation and its American subsidiary on asserted ground that damage stemmed from denial by Indonesian government of concession to cut timber, notwithstanding that regulations of Indonesia formed part of background to activities alleged or that members of Indonesian government were to play a part in alleged scheme, since neither validity of those regulations nor legality of behavior of Indonesian government was in question, Indonesia's right to withhold cutting license was not questioned and resolution of anticompetitive claims did not require determination of plaintiffs' right to receive cutting license since plaintiffs claimed that before it was known whether license would issue its contract and concession rights had substantial value as "business or property" interests.

Reversed and remanded.

Jones, Circuit Judge, dissented with an opinion.

Monopolies ⇐12(1)

The act of state doctrine did not preclude trial of Sherman Act claims brought by American corporation and its two Hong Kong subsidiaries against a Japanese corporation and its American subsidiary on asserted ground that damage stemmed from denial by Indonesian government of concession to cut timber, notwithstanding that regulations of Indonesia formed part of background to activities alleged or that members of Indonesian government were to play a part in alleged scheme, since neither validity of those regulations nor legality of behavior of Indonesian government was in question, Indonesia's right to withhold cutting license was not questioned and resolution of anticompetitive claims did not require determination of plaintiffs' right to receive cutting license since plaintiffs claimed that before it was known whether license would issue its contract and concession rights had substantial value as "business or property" interests. Sherman Anti-Trust Act, §§ 1 et seq., 2, 15 U.S.C.A. §§ 1 et seq., 2; Wilson Tariff Act, § 73, 15 U.S.C.A. § 8; Clayton Act, § 4, 15 U.S.C.A. § 15.

Fitzhugh H. Pannill, Jr., R. Hayden Burns, Houston, Tex., for plaintiffs-appellants.

Fulbright & Jaworski, Rufus Wallingford, R. J. Bradshaw, Jerry E. Smith, Houston, Tex., for defendants-appellees.

Appeal from the United States District Court for the Southern District of Texas.

Before JONES, CLARK and INGRAHAM, Circuit Judges.

(an option not spelled out explicitly in Rule 18, but stated by the Advisory Committee in 1966 Amendments to the Rule). Therefore, the district court had the discretion to move the trial to another court within the district.

[3] The district court was not, however, required to move the trial absent a strong showing of prejudice. Courts have generally felt that voir dire examination is the appropriate mechanism for screening jurors to avoid bias. According to the due process standards established in *Irvin v. Dowd*, 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961), the Constitution does not entitle a criminal defendant to a trial by a body of jurors ignorant of all facts surrounding a case, but only an impartial jury that will render a verdict based exclusively on the evidence presented in the court. Furthermore, this Court must apply the abuse of discretion standard to district court rulings on Rule 18—a standard which requires almost a compelling reason to believe the jury was biased by pre-trial publicity.

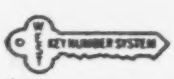
[4] In the jury selection process employed, the district court addressed prospective jurors three at a time outside of the presence of the other members of the panel and asked them general questions. If any one of the three prospective jurors indicated they knew the appellant, or had any preconceived judgment in respect to vote-buying, or the like, that person would be questioned at greater length outside the presence of the other two. No juror was accepted that had any prejudice in particular from pre-trial publicity.

Malmay bases his pre-trial publicity charge mainly on the public opinion polls of registered voters in Shreveport and three other cities within the Western District of Louisiana and the Fourth Congressional District. While almost one-half of those surveyed felt that charges of vote buying were true in general, the defense concedes that a significant proportion of the population reflected in these surveys did not acknowledge a prejudgment of Malmay. The defendant nevertheless alleges the difficulty of separating out the large percentage of persons who had prejudged the case and found bias. The allegation of impossibility in ferreting out such latent bias in half the population is not a strong argument, especially in view of the fact that voir dire examination revealed no such bias in the jurors interrogated. Therefore, there does not appear to be any substantial ground for overturning the district court's denial of an intradistrict transfer, even though that might have been a reasonable and prudent measure to avoid any effects of the publicity.

V. *Conclusion*

It is the opinion of this Court that Malmay's actions fall within 42 U.S.C. § 1973i(c), which states that anyone who "pays or offers to pay ... for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both." The decision of the district court is

AFFIRMED.



INDUSTRIAL INVESTMENT DEVELOPMENT CORPORATION, et al., Plaintiffs-Appellants,

v.

MITSUI & CO., LTD., et al., Defendants-Appellees.

No. 81-2175.

United States Court of Appeals, Fifth Circuit.

March 31, 1982.

American corporation and its two Hong Kong subsidiaries sued Japanese corporation, its American subsidiary and an Indonesian corporation charging antitrust conspiracy to keep plaintiffs out of business of harvesting trees in Indonesia and exporting

logs and lumber products therefrom to the United States, with defendant subsidiary also charged with tortious interference with alleged contractual rights of plaintiffs to a timber concession in Indonesia. The United States District Court for the Southern District of Texas, Ross N. Sterling, J., rendered summary judgment for defendants on one ground. The Court of Appeals, 594 F.2d 48, reversed and remanded. On remand, the District Court, Ross N. Sterling, J., granted summary judgment for defendants on remaining grounds, and plaintiffs appealed. The Court of Appeals, Reavley, Circuit Judge, held that: (1) defendants failed to show that there was no effect on United States commerce; (2) neither principles of comity nor international conflict warranted court's declining to entertain the suit; (3) plaintiffs were not without standing on a theory of "derivative injury"; (4) doctrine of forum non conveniens was not applicable; and (5) both antitrust claims and the nonfederal tort claim were to be resolved in one trial.

Reversed and remanded.

1. International Law ⇐10.9
Monopolies ⇐12(16.5)

Antitrust defendant's efforts to influence actions of Indonesian corporation with which plaintiff corporation had entered into joint venture to harvest logs from timber concession granted the Indonesian corporation in a government forest in Borneo, Indonesia were not protected by the *Noerr-Pennington* doctrine, just as they were not protected by the act of state doctrine, merely because they later resulted in government actions, i.e., Indonesian government's cancelling the forestry agreement. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

2. Commerce ⇐62.10

A restraint that directly or substantially affects the flow of commerce into or out of the United States is within scope of the Sherman Act. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

3. Commerce ⇐62.11

For antitrust purposes, competition between two American importers to obtain a source of supply on foreign territory can affect foreign commerce of the United States. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

4. Commerce ⇐62.11

Fact that Japanese parent corporation, which along with its American subsidiary and an Indonesian corporation allegedly conspired to keep plaintiff American corporation and its foreign subsidiaries from harvesting lumber in Indonesia and exporting it to United States, exported to Japan all lumber which it purchased from its American subsidiary in Indonesia did not demonstrate that there was no effect on United States commerce for Sherman Act purposes. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

5. Federal Civil Procedure ⇐2484

Summary judgment should be used sparingly in complex antitrust litigation and summary judgment is singly inappropriate where there is ample evidence of a conspiracy to keep a plaintiff from becoming a competitor and plaintiff has not had an opportunity to depose one of the alleged conspirators on the effect and intent of their efforts. Fed.Rules Civ.Proc. Rule 56(e), 28 U.S.C.A.; Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

6. International Law ⇐10.1

A district court should not apply the antitrust laws to foreign conduct or foreign actors if such application would violate principles of comity, conflicts of law or international law. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; Clayton Act, §§ 4, 7, 15 U.S.C.A. §§ 15, 18.

7. International Law ⇐10.8

Act of state doctrine is an example of a principle of comity which, when applicable, prevents a court from entertaining a claim.

8. Federal Courts ⇐755

Like the act of state doctrine, the question whether any other principle of comity, or of international law, or any conflicts of

law analysis prevents a district court from entertaining suit is a question of law fully reviewable by the Court of Appeals.

9. Monopolies ⇐12(1)

A decision not to apply antitrust laws to extraterritorial conduct must be based on solid legal ground and question is one of interpreting the scope that Congress intended to give the antitrust laws. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; Clayton Act, §§ 4, 7, 15 U.S.C.A. §§ 15, 18.

10. Federal Courts ⇐755

Decision not to apply antitrust laws to extraterritorial conduct is a question of law fully reviewable on appeal. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; Clayton Act, §§ 4, 7, 15 U.S.C.A. §§ 15, 18.

11. Courts ⇐512
International Law ⇐10.1

Neither principles of comity nor international conflict warranted refusal to entertain action by United States corporation and others charging Japanese corporation and its American subsidiary with conspiring to keep plaintiffs out of business of harvesting trees in Indonesia and exporting logs to United States as neither Indonesian court's nullification of one plaintiff's joint venture agreement with Indonesian corporation nor Indonesian government's action in canceling approval of joint venture constituted approval of defendants' efforts to destroy the venture or a determination that plaintiffs were not entitled to enforce their contractual rights or to do business in Indonesia. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; Clayton Act, §§ 4, 7, 15 U.S.C.A. §§ 15, 18.

12. Monopolies ⇐28(1.5)

Standing is a judicially created doctrine designed to foreclose recovery to some plaintiffs, who although within literal terms of Clayton Act, have suffered injuries that are too remote or indirect. Clayton Act, § 4, 15 U.S.C.A. § 15.

13. Monopolies ⇐28(1.5)

Simply because an element of a private antitrust claim can be traced to language of Clayton Act granting a cause of action to anyone injured in his business or property by reason of anything forbidden in antitrust laws does not make that element a component of standing, as the standing inquiry involves neither the violation issue nor the damages issue. Clayton Act, § 4, 15 U.S.C.A. § 15.

14. Federal Civil Procedure ⇐103

Standing is a matter to be determined only from the pleadings.

15. Monopolies ⇐28(1.6)

Question whether antitrust plaintiffs have in fact suffered injury within the target area of the illegal restraint is not properly termed a question of standing. Clayton Act, § 4, 15 U.S.C.A. § 15.

16. Monopolies ⇐28(1.6)

American parent corporation and its foreign subsidiary had standing to prosecute antitrust suit against Japanese parent corporation, its American subsidiary and Indonesian corporation where plaintiffs alleged that they were to be direct participants in harvesting and exporting logs from Indonesia to the United States and alleged that defendants destroyed one of plaintiff subsidiary's rights in Indonesian forestry concession for purpose of keeping plaintiffs out of the forestry trade, a business in which defendants allegedly also were engaged. Clayton Act, § 4, 15 U.S.C.A. § 15.

17. Monopolies ⇐28(1.6)

One purpose of doctrine of antitrust standing is to avoid the problems of double recovery. Clayton Act, § 4, 15 U.S.C.A. § 15.

18. Monopolies ⇐28(1.6)

Antitrust standing inquiry is not a search for labels but is a search for the most direct target of the anticompetitive acts. Clayton Act, § 4, 15 U.S.C.A. § 15.

19. Monopolies ⇐28(1.6)

Plaintiff corporation, which had entered into joint venture with Indonesian corporation to operate Indonesian forestry concession through a never-formed second Indonesian corporation which was to be

owned by plaintiff and defendant Indonesian corporation, had standing to challenge alleged conspiracy to keep plaintiffs out of the tree harvesting business in Indonesia especially as defendant's own actions were alleged to have aborted the entity, i.e., the never-formed Indonesian corporation, which defendants claimed had sole standing to sue. Clayton Act, § 4, 15 U.S.C.A. § 15.

20. Monopolies ⇐28(1.6)

Although one plaintiff Hong Kong corporation was wholly owned by a second plaintiff Hong Kong corporation and although all of the latter's stock was owned by two other Hong Kong companies which held stock in trust for plaintiff American parent there was no lack of standing, on a "derivative injury" basis, as regards antitrust action charging conspiracy to keep plaintiff out of business of harvesting timber in Indonesia and exporting it to the United States as neither plaintiff parent nor subparent claimed damages for injury to value of its interests in another corporation but alleged injury by reason of restraint of their business activity and each plaintiff alleged that it was their competition defendants were attempting to exclude, with focus on the American parent. Clayton Act, § 4, 15 U.S.C.A. § 15.

21. Monopolies ⇐28(1.6)

It is analytically unsound to consider the requirement of antitrust injury as an additional component of the standing inquiry as under traditional standing analysis a court does not reach the substantive issues but assumes arguendo that plaintiff has pled and could prove a violation of substantive law and the court asks only whether plaintiff has alleged a concrete injury and a sufficient causal relationship between injury and violation. Clayton Act, § 4, 15 U.S.C.A. § 15.

22. Monopolies ⇐28(1.6)

Doctrine of antitrust standing requires a closer look than does traditional standing analysis at the nature of defendant's alleged conduct and its relation to the alleged injury and the court must identify the affected area of the economy and determine whether the alleged injury occurred within that area. Clayton Act, § 4, 15 U.S.C.A. § 15.

23. Monopolies ⇐28(1.6)

A person may suffer a causally related injury and still not have antitrust standing because the injury is too far removed from the area of commerce endangered by a breakdown of competitive conditions. Clayton Act, § 4, 15 U.S.C.A. § 15.

24. Monopolies ⇐28(1.6)

Like traditional standing analysis, the antitrust standing inquiry does not permit a court to resolve such substantive issues as whether plaintiff has alleged a violation of law and whether plaintiff has in fact suffered injury. Clayton Act, § 4, 15 U.S.C.A. § 15.

25. Monopolies ⇐28(6.7)

As opposed to standing issues, question of whether a plaintiff has alleged antitrust injury requires a court to look at the nature of the violation alleged and the injury that results and to determine whether that injury *flows* from that which makes defendant's acts unlawful and such determination is one of substantive law. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; Clayton Act, § 4, 15 U.S.C.A. § 15.

26. Monopolies ⇐28(1.6, 6.7)

Question of standing and question of whether a plaintiff has alleged antitrust injury are separate and distinct and standing is generally understood as an issue to be resolved by the court which does not require the court to determine the legality of the defendant's alleged conduct. Clayton Act, § 4, 15 U.S.C.A. § 15.

27. Monopolies ⇐12(1.16)

Substitution of one competitor for another by means of unfair competition is not itself a violation of the antitrust laws. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; Clayton Act, §§ 4, 7, 15 U.S.C.A. §§ 15, 18.

28. Monopolies ⇐12(1.3)

Whether conduct aimed solely at a competitor violates Sherman Act depends

on the effect it has on competition in the relevant market." Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

29. Federal Civil Procedure ⇐2533

Where defendants' original motion papers gave antitrust plaintiffs no notice that they were made to produce proof on issue of violation and, thus, plaintiffs did not respond with an affidavit requesting continuance of summary judgment motion pending further discovery to support their allegations of market effects, the defendants would not be allowed to change their grounds of motion while simultaneously resisting discovery of the facts relevant to their new ground and, thus, summary judgment on violation issue was improper. Fed. Rules Civ.Proc. Rule 56(c), 28 U.S.C.A.; Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2.

30. Federal Courts ⇐45

Common-law doctrine of forum non conveniens is inapplicable to suits brought under the United States antitrust laws. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; Clayton Act, §§ 4, 7, 12, 15 U.S.C.A. §§ 15, 18, 22; 28 U.S.C.A. § 1404(a).

31. Federal Civil Procedure ⇐2547

Antitrust suit based on alleged conspiracy by defendant Japanese parent corporation, its American subsidiary and another to keep plaintiffs out of business of harvesting timber in Indonesia and exporting it to United States could not be dismissed on ground that Indonesia was a more convenient forum in that private remedy provisions of Clayton Act were designed in part to enforce the penal antitrust laws and it is a principle of international law that courts of no country execute penal laws of another country. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; Clayton Act, § 4, 15 U.S.C.A. § 15.

1. The defendants and the court below considered these three to be four grounds for summary judgment, as we also listed them in our prior opinion. *See* 594 F.2d at 49 & n.2 (expressly reserving decision on these grounds). As will be seen, however, we consider two of those grounds under the single issue of standing.

32. Federal Courts ⇐45

Since Sherman Act claim arising out of alleged conspiracy to keep plaintiffs out of business of harvesting trees in Indonesia was to be tried in the United States, dismissal, on ground of forum non conveniens, of nonfederal claim of tortious interference with contractual relations in Indonesia was abuse of discretion as to a great extent the two claims involved the same events, evidence and witnesses. Sherman Anti-Trust Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; Clayton Act, § 4, 15 U.S.C.A. § 15.

Louis Paine, Robert Hayden Burns, Fitzhugh H. Pannill, Jr., Houston, Tex., for plaintiffs-appellants.

B. J. Bradshaw, Rufus Wallingford, Jerry E. Smith, Daniel M. McClure, Houston, Tex., for defendants-appellees.

Appeal from the United States District Court for the Southern District of Texas.

Before COLEMAN, REAVLEY and SAM D. JOHNSON, Circuit Judges.

REAVLEY, Circuit Judge:

This is an antitrust suit. The district court initially granted the defendants' motion for summary judgment on the single ground that the action was barred by the act of state doctrine. We reversed. 594 F.2d 48 (5th Cir. 1979), cert. denied, 445 U.S. 903, 100 S.Ct. 1078, 63 L.Ed.2d 318 (1980). On remand, the district court turned back to the same motion of the defendants and granted summary judgment on the three remaining grounds: (1) that defendants' conduct is beyond the extra-territorial scope of the antitrust laws; (2) that plaintiffs have no standing to sue under the antitrust laws; and (3) *forum non conveniens*.[1] The court declined to exercise pendent jurisdiction over plaintiffs' nonfederal claims, and dismissed the suit.[2] Defendants

2. Because we reverse the district court's deci-

preliminary stage we cannot weigh the merits of his claim and therefore cannot say that the district court abused its discretion.

We see no merit in plaintiff's appeal from the denial of his motions for specific findings and reconsideration. Similarly, the district court's grant of defendants' motion for further relief was not an abuse of its discretion.

The district court's orders are affirmed in their entirety.

INDUSTRIAL INVESTMENT DEVELOPMENT CORPORATION, et al., Plaintiffs-Appellants,

v.

MITSUI & CO., LTD., et al., Defendants-Appellees.

No. 81-2175.

United States Court of Appeals, Fifth Circuit.

May 9, 1983.

Rehearing and Rehearing En Banc Denied June 13, 1983.

After the Court of Appeals, 594 F.2d 48, reversed and remanded summary judgment entered for antitrust defendants on one ground by the United States District Court for the Southern District of Texas, Ross N. Sterling, J., the District Court on remand granted summary judgment for defendants on remaining grounds, and plaintiffs appealed. The Court of Appeals, 671 F.2d 876, reversed and remanded, and the United States Supreme Court, 103 S.Ct. 1244, vacated and remanded. On remand, the Court of Appeals held that complaint was sufficient to state antitrust cause of action.

District court's judgment reversed and remanded.

Monopolies ⇐28(6.2)

Complaint alleging that defendants conspired to restrain competition between American competitors by preventing plaintiffs from obtaining source of supply of logs for their business of importation of lumber and lumber products into United States, that economic freedom of commerce coming into United States had been restricted by defendants, and that plaintiffs were directly injured because defendants conspired to disrupt their joint venture, to prevent their entry into competition with potential American competitor and thereby to deprive them of business profits because of loss of that competitive position and opportunity was sufficient to state antitrust cause of action.

Louis Paine, Jr., Robert Hayden Burns, Fitzhugh H. Pannill, Jr., Houston, Tex., for plaintiffs-appellants.

B.J. Bradshaw, Rufus Wallingford, Jetty E. Smith, Daniel M. McClure, Thomas R. McDade, William R. Pakaika, Houston, Tex., for defendants-appellees.

Appeal from the United States District Court for the Southern District of Texas.

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before COLEMAN, REAVLEY and JOHNSON, Circuit Judges.

plete remedy, the requirement of irreparable injury would also be a formidable obstacle to the grant of a preliminary injunction.

Senator LEAHY. The last issue, because it has been raised with the committee—tell me about the Judge McDonald case.

Mr. SMITH. Certainly, I would be glad to. Would you like me just to speak generally about it?

Senator LEAHY. Sure. I would just put it on the record that this was a case where the city of Houston asked that a black judge recuse herself in a civil rights case. She had been, I guess, involved in the settlement of a Voting Rights Act case. The City of Houston asked that she recuse herself from consideration of a petition for attorneys' fees in this Voting Rights Act case against the city.

Tell me how you became involved and what happened.

Mr. SMITH. I would be pleased to, Senator. This was, as you indicate, the tail-end of the case, the Voting Rights Act case, but only the attorneys' fees element of the case. Several months before I became city attorney—hence, before I had any involvement in the case—the city had raised a question about whether the judge should recuse herself.

This came about—and it is fairly complicated, but there were three related cases. Judge McDonald had been handling two of those and no objection had been raised or has ever been raised as to her handling of those two.

But as to the third related case, it was a class action. The city asserted that she was a member of the class and, hence, under Section 455 of the judicial code was disqualified, not because of bias but because she was a member of the plaintiff class.

That matter had been raised both orally and in writing with the court, as I say, long before I arrived. A hearing was scheduled shortly after I became city attorney. The matter had not been resolved, but the judge had, in fact, ruled that she would not sever the third case away and was going to hear it along with the others.

The city filed a motion to recuse and it was eventually heard by the fifth circuit. There has been a little bit of confusion or misunderstanding about the city's position in that case and it is important that I explain it to you briefly.

There have been some who mistakenly have understood the city's position to have been that a black or minority judge should not sit or could not be fair and unbiased in a Voting Rights Act case.

Not only would that be, as far as I am concerned, a reprehensible position to take, and an erroneous one, but it is not the position that the city ever sought to take or even hinted at in this case.

There was never a hint that Judge McDonald was biased or should not sit because of her race, only because she was a party as a member of the class, and Section 455 clearly states that a judge shall recuse when that judge is a party to the action.

We were careful in the filings that we made in the circuit court on this matter to be clear about what the city's position was so that there was not a misunderstanding by—anyone, I think, who reads the pleadings will see that it is clear, and I certainly have them here and would be pleased to submit them or read them to the committee, because they were carefully drawn to make it clear that the city not only was not questioning Judge McDonald's fairness, but that the city would welcome any minority or female judge

to sit on the case who was not a member of the plaintiff class; that is to say, who is not a registered voter within the City of Houston.

The city even named other judges who would fit that category so that the court would know very clearly that the city was not taking the position, again, that race would indicate bias.

I might further point out that while, certainly, a question has been raised about whether the city should have gone into this whole recusal question in the first instance—and, again, as I have said, this was done before I came on board—in its opinion, the fifth circuit was careful to point out that the position that the city had taken was a substantive question that had been raised and that the city may have served the court and the parties well by raising the issue when it was raised.

After the panel opinion in the fifth circuit, the matter was dropped. We did not carry it any further and the matter proceeded under Judge McDonald.

Senator LEAHY. Did not the fifth circuit also say that upholding the city's position would have created an offensive precedent against minority judges?

Mr. SMITH. Yes. The circuit, Senator——

Senator LEAHY. Do you agree with that?

Mr. SMITH. I agree that, certainly, there were people who, when reading that, might be offended by the thought that race would play a part in what kind of judge should sit. I might add, if I may, that the fifth circuit pointed out this was a case of first impression; that there had been no rulings on this issue in the past.

And the circuit by its footnote that I mentioned a minute ago seemed to indicate that it was appropriate for the city to raise the issue. I am comfortable with the ruling the fifth circuit has made. By making that ruling, the circuit protected all the parties in that case from any future question of recusal so that once the hearing was held, nothing would be undone because there was anything improper about which judge was sitting.

That purpose was accomplished.

Frankly, and while I hesitate to second-guess my colleagues in the department who, with the best of intentions, made the decision before I was with the city to pursue this matter, perhaps if it had been looked at more closely at the time they would have decided that, as you say, the offensive precedent that might have been created outweighed any interest in bringing the matter to the court's attention.

Senator LEAHY. Thank you.

Senator Thurmond, do you have any questions?

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Smith, did you hear Senator Johnston's testimony a few moments ago?

Mr. SMITH. Yes, I did, Senator.

Senator THURMOND. He is opposed to you because he says Louisiana ought to have this judge. I understand that Mississippi may be opposed to you for that reason. Of course, that is a fight they should have made with the Attorney General. They tried to convince the Attorney General, I guess, but were unable to do so.

But at any rate, it is a matter that could come up. However, the President has named you and the American Bar considers mainly

three qualities in considering a judge, and I believe they recommended you as being qualified.

Mr. SMITH. Yes.

Senator THURMOND. That is integrity, judicial temperament, and professional qualifications. The committee will finally have to act on it, but I just thought I would call that to your attention.

Now, there is a question raised here about some remark you made years ago about some women's organization. Was it about an organization or about women in general, or what was it?

Mr. SMITH. Senator, the remark had to do—was in regard to a particular conference that was to be held in Houston in 1977. It was not——

Senator THURMOND. What was the purpose of you making the remark?

Mr. SMITH. Well, Senator, I am not sure that I had a good enough reason that I should have made the remark. Frankly, the thrust of my remark, as Senator Leahy indicated, was the question of Federal funds being used to sponsor the conference.

I went further than I should. Frankly, I attacked the individuals when I should have addressed the principle or the thought, and that was a mistake.

Senator THURMOND. Do you not think you should apologize to those women?

Mr. SMITH. Yes, certainly. Again, they did not deserve a personal attack.

Senator THURMOND. What?

Mr. SMITH. They did not deserve the personal attack that they got.

Senator THURMOND. Yes. Did you apologize to them?

Mr. SMITH. Well, I have since apologized publicly. I did not apologize at the time.

Senator THURMOND. A man in public life has to be careful of what he says.

Mr. SMITH. Absolutely.

Senator THURMOND. Are you prejudiced against women?

Mr. SMITH. No, I am not, and I believe my public record will so indicate that I am not.

Senator THURMOND. Do you think as a judge you can be fair to women?

Mr. SMITH. I certainly do, Senator.

Senator THURMOND. You had better be; women constitute over half the population. [Laughter.]

Mr. SMITH. I understand, yes, sir.

Senator THURMOND. Now, let me ask you this question. Thomas Jefferson remarked shortly after the ratification of the Constitution that our Nation's particular security is the possession of a written Constitution. "Let us not make it a blank paper by construction."

Mr. Smith, what do you think he meant when he gave that warning, "let us not make it a blank paper by construction?"

Mr. SMITH. Senator, I believe what he meant was that the Constitution is and should remain a written document; that is, that the words and the phrases in the Constitution must be read and interpreted and that judges should not simply ignore the words in the

Constitution and impose whatever principles they believe are right on litigants who are before the court.

I believe that Thomas Jefferson was reminding us that the Constitution, while it certainly must be interpreted by judges who read phrases and words that are not always precise, must still look to those words and phrases for constitutional principles.

Senator THURMOND. The Constitution says what it means and means what it says, does it not?

Mr. SMITH. Yes, it does.

Senator THURMOND. And what he is trying to say is it explains itself and that if you put some strained construction on it, you will get a different meaning. Is that not what he really meant?

Mr. SMITH. I believe so.

Senator THURMOND. Well, some judges in the last 40 years have put some strained constructions on the Constitution, and as a consequence I think we are suffering today from it.

Now, if you are confirmed by the Senate, would you follow the Constitution as it is written? Would you obey the Constitution and not put some strained construction on it?

Mr. SMITH. Certainly.

Senator THURMOND. Now, a good many judges, too, have been accused of being activist judges. We have the three branches of the law. The Congress makes the law and the executive branch headed by the President administers the law, and the Supreme Court and inferior courts interpret the law.

But some judges have felt they were lawmakers. Because of their own feelings about matters, they interpreted matters in a way that had the effect of making a law. Now, what is your feeling about that, activism on the part of the judiciary?

Mr. SMITH. Senator, it is important for each of the branches of government to operate within its sphere of authority under the Constitution. It is up to the legislative branch to make the law and up to the judicial branch to interpret the law.

Now, I should say in that same context that in interpreting the law it is certainly up to the judicial branch to make sure that those interpretations are enforced. So to the extent that courts are active in bringing about enforcement of their decrees, their opinions and their orders, that is an appropriate part of the judicial task.

But judges do not, in fact, make policy or make the law. They should vigorously enforce it.

Senator THURMOND. Some judges have taken over prisons, some have taken over hospitals, some have taken over school districts, and that is what I mean by judicial activism. A judge's job is to interpret the law and hand down decisions in accordance with the law and the Constitution, and not to make the law.

Mr. SMITH. Yes, that is correct.

Senator THURMOND. Do you think you could conform to that as a judge?

Mr. SMITH. I certainly pledge to, Senator.

Senator THURMOND. Thank you, Mr. Smith.

I have no further questions, Mr. Chairman.

Senator LEAHY. Thank you very much, Senator Thurmond.

Mr. Smith, thank you. We will submit to you some other questions for the record, and I appreciate your being here today.

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Mr. SMITH. Thank you, Senator, and I might also thank your staff. They have been very accommodating and courteous and patient with me, and I appreciate that.

Senator LEAHY. They are a good staff and I am privileged to have them trying to guide me along here. Thank you.

Senator Thurmond, do you really mean it that people in public life have to watch what they say? None of us would dare speak again.

Senator THURMOND. I think they had better be careful of what they say or they may regret it later.

Senator LEAHY. I know you never have. I have, on occasion. [Laughter.]

We would call the honorable Anthony J. Scirica. Judge Scirica, would you raise your right hand, please. Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge SCIRICA. I do.

Senator LEAHY. Judge, do you have members of your family here?

TESTIMONY OF HON. ANTHONY J. SCIRICA, CONSHOHOCKEN, PA, TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT

Judge SCIRICA. Yes, sir, I do. My wife, Susan, is present, and my son, Ben.

Senator LEAHY. Would they please stand?

[The aforementioned persons stood.]

Senator LEAHY. It is good to see you here.

Judge SCIRICA. Our daughter, Sarah, is off on a bicycle trip in Nova Scotia.

Senator LEAHY. I am envious.

We are delighted to have the members of your family here. I know they must be very proud of you today and very proud to be down here. Where, incidentally, is—I know I am going to mispronounce it—Conshohocken? Pronounce it for me.

Judge SCIRICA. That is pretty close; Conshohocken. It is an Indian name that means pleasant valley and it is about 20 miles west of Philadelphia.

Senator LEAHY. Now, Judge, you have served for the past 7½ years as a trial court judge. You were first in the State court, then the U.S. District Court. Some people ask how valuable is the experience of a trial judge if you are going to go on to the appellate bench. How do you feel about that?

Judge SCIRICA. I think it is very valuable, Mr. Chairman. I know that there have been many fine appellate judges in our country who have not served on the trial court, but I hope that the experience I have had at the trial level will help me to better understand the issues that have been presented.

There is so much in a written record that is unsaid and, having been a participant in the process either as a lawyer or as a trial judge, I believe fleshes out and, in effect, gives human content to many of the abstract issues that appellate judges have to deal with.

Senator LEAHY. I might note that in my years as a prosecutor, as I brought new assistant prosecutors in my office I would have them

work almost immediately on some of the appellate matters that we had, figuring if they went back through the transcripts and all, they would note the mistakes they had to wrestle with on appeal and might not make them below. I suspect that there are certain advantages there.

Judge SCIRICA. That is good training, I agree.

Senator LEAHY. You also listed among your accomplishments when you were in the State legislature, your work in drafting the Electronic Surveillance Control Act. I found that interesting because I have got the same issues here in the Senate. I was a principal sponsor of the Electronic Communications Privacy Act which passed last year.

Now, all the way through it I had to grapple with the same Constitution that Senator Thurmond referred to so well just a few minutes ago, and how you apply that to the enormous changes in technology. Things that many of us would not have imagined a decade or generation ago, and certainly nobody meeting back in the Commonwealth of Pennsylvania 200 years ago up in Philadelphia ever would have thought about as they were drafting the Constitution, must be considered.

What about the role of the courts? Do they have a responsibility to respond when constitutional rights are threatened by the new technology? It is a very difficult question, but it is prompted by Senator Thurmond's earlier discussion with Mr. Smith.

I mean, how do you take this extraordinarily new technology and then try to work it around to fit the Constitution? Do you not have to be doing—I hate to use the term legislation, but do you have to think a little bit like a legislator when you are doing it?

Judge SCIRICA. I think you do, but I think that there are a lot of basic questions that the legislature or the Congress ought to address. They ought to make those policy decisions to give the courts guidance as to how to proceed.

In Pennsylvania, we had no electronic surveillance law at all and because of a bad situation involving organized crime and political corruption, the legislature found it necessary to adopt a statute. We used the Federal statute as a guide, but in many ways the Pennsylvania statute was more restrictive than the existing Federal statute.

In effect, we said that there can be no eavesdropping unless by court order, and only then under certain circumstances. This was only 10 years ago, and as you have said there has been a revolution in technology since that time.

And I suspect if we were beginning anew, we would put some different language in there, and it is my understanding that the legislature is rethinking some of those concepts. But I think that it is appropriate for the legislature to go through all of these problems and then to make the policy decisions, put it in the legislation, and then have the courts enforce those decisions that are made by the legislature, and, of course, if the Constitution comes into play, to enforce that as well.

Senator LEAHY. Would it be fair to say that legislative bodies, whether at the Federal level or the State level, really have an obligation to update their legislation as this technology emerges and not throw it all on the backs of the court?

We in the legislative bodies are really in a better position to at least take the initial steps to protect people's rights, are we not?

Judge SCIRICA. I quite agree with that, and I think that practically every judge would agree with that. This is an area that the legislature should act on.

Senator LEAHY. I am glad to hear you say that. I worry very much that sometimes because of the political need to compromise on legislation just to get it passed, we sometimes fudge around the edges on some of these issues. I do not envy judges in having to work with that and interpret exactly what is needed.

In this area of emerging technology, I agree. I think the courts can always apply constitutional principles, but it is going to be a lot easier to do it if we make the law pretty clear to begin with.

Senator Thurmond, did you have any questions, sir?

Senator THURMOND. Thank you.

Judge Scirica, I want to congratulate you upon your appointment by the President——

Judge SCIRICA. Thank you.

Senator THURMOND [continuing]. And having the endorsement of your Senators who have come here in your behalf.

Judge, there is frequently a conflict between the deeply felt constitutional views of a Federal judge and the constraints of judicial precedent. How would you resolve the tension between personal jurisprudence and precedent?

Judge SCIRICA. Well, Senator Thurmond, you are correct that often there are conflicts, but I think that a judge has a duty to have a——

Senator THURMOND. Speak a little louder. I cannot hear you.

Judge SCIRICA. I think that every judge must have great respect for stare decisis, for judicial precedent, and to think carefully about moving the law in new directions. All of us have personal opinions and predilections, but I think we must put them aside and try to interpret the Constitution and the statutes of the Congress and the State legislatures as they were intended.

Senator THURMOND. In his famous dissent in *Plessy* v. *Ferguson* in 1893, Justice John Harlan referred to our Constitution as a color-blind Constitution. Would you agree with this characterization?

Judge SCIRICA. Yes, sir, I would.

Senator THURMOND. You heard what I said a few moments ago about judicial activism. Would you give us your opinion on that?

Judge SCIRICA. Perhaps the best way to answer that, sir, is to say that I spent 9 years in the Pennsylvania Legislature and I think I have a pretty good idea how laws are made and the difficult policy decisions that are made by the Congress and by the State legislatures.

I believe that the Congress is the appropriate forum for making those difficult policy decisions and that the courts should try to follow that intent except, of course, when any law might contravene the Constitution.

Senator THURMOND. In other words, you think you can refrain from legislating in your decisions?

Judge SCIRICA. Yes, sir.

Senator THURMOND. That is all, Mr. Chairman. Thank you very much.

Senator LEAHY. Thank you very much, Senator.

Judge, because we are running so far behind, I am going to submit for the record some questions about your experience on the Sentencing Commission. Now that sentencing is going to be reviewed at the appellate level, I would be very interested in your response to that.

[The aforementioned material follows:]

JOSEPH R. BIDEN, JR., DELAWARE, CHAIRMAN
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DONNA HUFFMAN, STAFF DIRECTOR
DENNIS W. SHEDD, MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 21, 1987

Honorable Anthony J. Scirica
5614 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Scirica:

In order to supplement the record of this afternoon's hearing on your nomination to be U. S. Circuit Judge for the Third Circuit, please respond to the following additional questions. Since your testimony was taken under oath, your responses should be accompanied by an attestation of their accuracy.

Please send your response to the Judiciary Committee at Room SD-224, Dirksen Senate Office Building, Washington, DC 20510, to the attention of Steven J. Metalitz, Special Counsel. If you have any questions concerning this request, you may call Mr. Metalitz at (202) 224-8191. Thank you for your cooperation.

Sincerely yours,

Patrick Leahy

PATRICK LEAHY
United States Senator

cc: Honorable John C. Bolton
enclosure

SCIRICA: SENTENCING GUIDELINES

When you were last before the Committee, during your confirmation hearing for the District Court in 1984, you were asked about your work as chairman of the Pennsylvania Commission on Sentencing and as author of the legislation establishing it. Your advice on federal sentencing guidelines was to "keep the guidelines simple, and keep them advisory."

Since then, the Sentencing Reform Act of 1984 has become law, and the United States Sentencing Commission has issued sentencing guidelines that will become law this fall, barring Congressional action to modify them or to delay their implementation. Have you studied the Sentencing Reform Act and the proposed sentencing guidelines? As an expert in this field, what grade would you give to the federal effort to reform sentencing practices?

The Sentencing Reform Act will get the federal courts of appeals into the business of reviewing sentences on a regular basis. This is a new field for the federal appellate courts, one that may occupy a good deal of the docket of the courts of appeals. Your prior experience with developing sentencing guidelines in Pennsylvania will be quite valuable to you in this new part of the job of a United States Circuit Judge. In your view, what are the most important principles that appellate courts should use in reviewing sentencing decisions by trial judges?

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY J. SCIRICA
JUDGE

5614 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
PHILADELPHIA, PENNSYLVANIA 19106
(215) 597-2399

July 27, 1987

Senator Patrick Leahy
Committee on the Judiciary
Room SD-224
Dirksen Senate Office Building
Washington, D.C. 20510

Attn: Steven J. Metalitz
Special Counsel

Dear Senator Leahy:

I am pleased to enclose my response to the supplemental questionnaire on the Sentencing Commission.

If you have any questions, please do not hesitate to call me.

Very truly yours,

Tony Scirica

Anthony J. Scirica

AJS:dm

Enclosure

From 1975 to 1984 I was intimately involved in sentencing reform and the adoption of sentencing guidelines in Pennsylvania. Since joining the federal bench however, my new duties have precluded further involvement. I have read the guidelines of the United States Sentencing Commission but claim no expertise on the federal guidelines. I strongly endorse the concept of sentencing guidelines promulgated by a sentencing commission.

The purpose of the Pennsylvania guidelines is to enable the judge to arrive at a just sentence and to eliminate unwarranted disparity. The hallmark of the guidelines is structured discretion based on the gravity of the crime, the criminal history of the offender, and appellate review. The goal of the Pennsylvania guidelines is a just sentence, one that fits the crime and the individual, has a broader meaning to society and is generally applied throughout to like individuals who commit like crimes. A just sentence is a thoughtful and rational sentence, not an arbitrary one. I am pleased to enclose a copy of the Pennsylvania statute and the initial sentencing guidelines.

Having gone through the process both as a member of the Pennsylvania legislature and a member of the sentencing commission, I am aware of range of options and the extremely difficult task facing the United States Sentencing Commission. Both the Congress and the sentencing commission have examined the various policy choices and have made their decisions. I would not presume to criticize those policy decisions.

In Pennsylvania we have viewed the formulation of guidelines as an evolutionary process. With careful monitoring and openness to constructive suggestions, the guidelines have been improved. In my opinion the revised federal guidelines are a step in the right direction and a tremendous improvement over the initial draft.

As an appellate judge reviewing the sentences of the trial courts, I would apply the factors enumerated in 18 U.S.C. § 3742(d) and § 3553. I am pleased that Congress has provided that the Court of Appeals should give due regard to the opportunity of the district court to judge the credibility of the witnesses and to accept the findings of fact of the district court unless they are clearly erroneous.

Anthony J. Scirica, J.

AFFIDAVIT

I, Anthony J. Scirica, hereby state that the above statement is true and correct to the best of my knowledge, information and belief.

Anthony J. Scirica, J.

Sworn to and Subscribed
before me this 27th day
of July, 1987.

Harry E. Grace, Jr.
DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Senator LEAHY. I thank you very much for being here, and also I thank the members of your family who are here.

Judge SCIRICA. Thank you very much, Senator Leahy.

Senator LEAHY. Thank you, sir.

Trying to stay in the same Commonwealth, we will call William D. Hutchinson.

Judge, would you raise your hand, please? Do you solemnly swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge HUTCHINSON. I do.

Senator LEAHY. Judge, do you have members of your family here?

TESTIMONY OF HON. WILLIAM D. HUTCHINSON, SCHUYLKILL HAVEN, PA, TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT

Judge HUTCHINSON. Yes, I do. I have a large contingent of them. My wife, Louise.

Senator LEAHY. We are pleased, Ms. Hutchinson.

Judge HUTCHINSON. Three of my four children; my daughter, Katherine Barone from Philadelphia.

Senator LEAHY. Would you all stand, please?

[Persons stood as their names were mentioned.]

Judge HUTCHINSON. My son, Bill, Jr., and his wife, and my daughter, Louise.

Senator LEAHY. Would you all stand?

Judge HUTCHINSON. And I have my two aunts, Mary and Emma Lee Price, as well.

Senator LEAHY. We are glad to have you both here. I assume that if you could send them all in to vote, you would not even have to have the hearing. [Laughter.]

Judge HUTCHINSON. I also have my staff, who came as a cheering section, and some of my present and former law clerks.

Senator LEAHY. Let us have them stand here, too.

[The aforementioned persons stood.]

Senator LEAHY. I surrender. [Laughter.]

Could I make sure that you check with our staff before you leave? I would like to get the names of the people who are here from you afterwards so they can be part of the official record.

Judge HUTCHINSON. I might say that I am missing one son, Second Lieutenant Andrew F. Hutchinson, who is at Fort Sill, Oklahoma.

Senator LEAHY. We will put his name in, anyway. [Laughter.]

We will note that he would be here if he could be here, but I would like to get everybody's names afterwards for the record.

I should also note for Judge Scirica and others that you are welcome to stay, but you are also welcome if you want to leave and meander around. I would advise you do it indoors where it is a little bit cooler, but the committee will take absolutely no offense if anybody feels they want to leave.

Let me ask you, Justice Hutchinson, you served also for a time as a legislator; in fact, a decade, I believe.

Judge HUTCHINSON. Almost; 9 years.

Senator LEAHY. And you were chairman of the Subcommittee on Courts of the State House of Representatives?

Judge HUTCHINSON. That is correct.

Senator LEAHY. Obviously, any experience in government has value, but in your mind what value will your legislative service be to you as a circuit appeals judge?

Judge HUTCHINSON. I think the main value of serving in the legislature to me was to gain an understanding of often how difficult and complex the issues become in any democracy, and the difficulty of gathering facts—what I have heard called affective facts that do not appear on a record within the rules of evidence.

The legislature is the body that is capable of getting those facts. We judges—when you are on a court, I have found you have a very narrow view. You have got to look at the record and decide with that, and I think that a sensitivity to the role of the legislature and the ability that they have in a democracy to get these conflicting views and hammer out a compromise on issues where there is no consensus is very important. It gives you a little humility. I think that is important in judges.

Senator LEAHY. Judge, like so many we have here, you are making a transition from the State court system to the Federal court system. Does that give you any apprehension?

Judge HUTCHINSON. Well, it gives me some. The methods of the law and the analytical tools remain the same, but there is a lot of law I have to learn in areas of the law that perhaps we do not get as much in the State court.

Yes, I get a little apprehensive about that, and I have also got to learn laws of States that I am not as familiar with as I am with Pennsylvania. But I plan to take advantage of the various things that the Judicial Conference offers and I hope I can be a quick study.

Senator LEAHY. Judge, you heard me ask Judge Scirica about electronic data privacy and how the courts have to grapple with these enormous changes in technology and apply to them our 200-year-old Constitution. Would your answers be materially different than the answers he gave me?

Judge HUTCHINSON. No, not materially different. That is a very difficult problem and it is one in which, again, I agree with Judge Scirica. As a matter of fact, I believe he and I worked together on some of those statutes and I think we had generally the same viewpoint on it.

Senator LEAHY. Thank you.

Senator Thurmond, sir.

Senator THURMOND. Thank you, Mr. Chairman.

Judge, I want to congratulate you upon your appointment to the circuit bench for the third circuit.

Judge HUTCHINSON. Thank you, Mr. Senator.

Senator THURMOND. I just have a couple of questions. Judge, what are your views on the primary purposes of the criminal justice system?

Judge HUTCHINSON. I believe the primary purpose of the criminal justice system is to provide a safe society; that is, to deter crime, and I primarily I would think that its main purpose is the deterrence of crime and its prevention.

We do that, as I think Justice Holmes said, in a very strange way. We do it either, A, by punishing people who commit crime and then, by their example, hoping to deter other people from doing it. I think that is the prime purpose.

Senator THURMOND. What do you feel is the proper application of stare decisis in constitutional law?

Judge HUTCHINSON. I think that the role of stare decisis in constitutional law is a very important one. I think that the Constitution of the United States, if it is to have any meaning, or indeed of any State, should not be a chameleon that changes its spots, so to speak, quickly over a period of time. So I think it has a strong role to play.

Of course, I believe, as I said in one of my statements, the law must be flexible, but it is not unbounded. Because of the problems, as we say, of electronic surveillance, and so on, we have to try to struggle to adapt to those new technologies.

Senator THURMOND. For instance, what is the duty of a Federal judge when confronted with a case in which one of the precedents of his court clearly conflicts with the Constitution as that judge interprets it?

Judge HUTCHINSON. Well, I think that depends. My appointment is to the third circuit, and that is an inferior court in the Federal system. And I believe that as a judge of an inferior court that you are obligated to follow the clear precedent, as any court is, of the U.S. Supreme Court.

That is not to say that you cannot suggest to that court in a professional manner that you might have some problems with it. It is a little different, it seems to me, if it is a precedent in your circuit that you feel very strongly about—not feel strongly about, but that you feel is violative of the Constitution. In that case, I think you have a little additional freedom to speak out on it.

Senator THURMOND. Of course, the Supreme Court has reversed itself in some cases as the years have gone by. *Plessy* v. *Ferguson* was an example referred to a few moments ago.

What is your view toward judicial activism?

Judge HUTCHINSON. I have difficulty—I am not sure exactly what it means, but I have some difficulty with being activist judge, and that goes back to something I said a little bit earlier.

When I as a judge look at a record, particularly an appellate record, I have great difficulty in being so sure of myself that I can see around the whole problem and therefore put down broad, free-ranging decrees that order people to do very complex tasks.

I think, again, we go back to the philosophy of this country, and I think I said this, too, in some of the questions. We do not go back to Plato; we are not philosopher kings as judges in a democracy. We go back to Montesquieu and the division of powers and we have to pay good and decent respect to all the other institutions of our society, legislative and, indeed, private settlement, where appropriate.

I think we step in with affirmative duties when it is necessary, absolutely necessary, to protect important constitutional or statutory rights.

Senator THURMOND. In other words, you believe in the separation of powers?

Judge HUTCHINSON. I certainly do.

Senator THURMOND. And that each branch of government should respect that?

Judge HUTCHINSON. Yes, I firmly believe that.

Senator THURMOND. I do not have any other questions. I hope you have a happy tenure on the bench.

Judge HUTCHINSON. Thank you very much, Mr. Chairman, Senator Thurmond. Thank you very much.

Senator LEAHY. Thank you very much, Judge Hutchinson. Incidentally, did you take a bus down here today? [Laughter.]

Judge HUTCHINSON. Senator, we came from different places.

Senator LEAHY. OK.

Judge HUTCHINSON. But we met here in Washington. Thank you.

Senator LEAHY. Thank you very much.

I would ask John Tinder to step forward again, please. Mr. Tinder, would you raise your right hand? Do you solemnly swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. TINDER. I do.

Senator LEAHY. Now, Mr. Tinder, you also come to us well recommended here by Senators Lugar and Quayle and Congressman Jacobs, and before we get started, could you introduce the members of your family here again? I know they were mentioned before, but do it one more time.

TESTIMONY OF JOHN DANIEL TINDER, INDIANAPOLIS, IN, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA

Mr. TINDER. Yes, thank you, Mr. Chairman. My wife, Jan Carroll, is seated there in the third row.

Senator LEAHY. How do you do? Nice to have you here.

Mr. Tinder, I note that you are a U.S. attorney. I have always thought that was the best job anybody could have. I enjoyed my days as a prosecutor and if I could have gotten anybody to appoint me U.S. attorney, that is what I would have done, but I could not so I ran for the Senate instead. [Laughter.]

But you want to go off in a different direction. Now, let me ask you, are you a member of any organization that invidiously discriminates on the basis of race, national origin or gender?

Mr. TINDER. No, sir.

Senator LEAHY. And I understand, and tell me if this is correct, that within the last year you resigned from two social clubs when you became convinced they would not admit women. In one case, you had nominated a female Federal judge for membership and resigned the day the application was defeated. Is that correct?

Mr. TINDER. That is correct, Mr. Chairman. That particular club is a lawyers' club in Indianapolis. I was a member of that from early 1986 into early 1987; the other club, I was a member from 1984 into 1986.

Senator LEAHY. It is interesting. You are saying the Indianapolis lawyers' club would not accept as a member a sitting Federal judge just because that judge happened to be a woman?

Mr. TINDER. That seemed to be the only apparent reason. She was otherwise qualified in every respect.

Senator LEAHY. I want to compliment you on that. I think you send the kind of message that a Federal judge should send and I compliment you for doing that. I am sure that you must have had many friends in that club and, I am sure, many people that you strongly respect.

It is easy for us to look at these dilemmas in the abstract from here in Washington. I know when you are the one right there, they are not always easy, and I compliment you on your action.

Mr. TINDER. Thank you. I did not intend to crusade on that issue in those clubs, but it was apparent that they were immutable in their policies. The rules were not stated so that they would discriminate, but the policies were.

Senator LEAHY. Your net worth statement, without going into the amounts on it, says that some of your assets are in a blind trust. Were the trust and the trustees approved by the Office of Government Ethics?

Mr. TINDER. Yes, they were.

Senator LEAHY. And I understand this was set up shortly after you became a U.S. attorney. Was there a particular reason?

Mr. TINDER. It was about a year after I became U.S. attorney. The reason that I investigated and ultimately entered into the blind trust was that the longer I was U.S. attorney, the more apparent it became to me that a number of the entities that we would investigate from time to time or individuals were associated with particular entities that were Indiana corporations or corporations that I would have ordinarily invested in.

Rather than pose a conflict in a particular case, I chose to form the trust, which was not easy to do, I must add. It was a very complicated process and I had to retain counsel in order to do it. In any event, I did it in order to avoid potential conflicts.

Senator LEAHY. I think somehow we are going to have to figure out a way to make those blind trusts easier to create. You are not the first person who has suggested the complexity of them and I think it is a point well taken.

Mr. TINDER. I must also admit, Mr. Chairman, that the secondary motive was for a matter of convenience. The reporting form that is required to be filed annually by Federal employees, including U.S. attorneys, is a very complicated form and the requirement to report each investment was somewhat burdensome and reporting a blind trust is much more convenient.

Senator LEAHY. Now, as a U.S. attorney you are a strong advocate for the government in criminal cases or those other cases the government gets involved in. When you go on the bench the government has to be just one other litigant before you.

There may be assigned counsel on the other side, against the power and majesty of the U.S. Government. It could be the Attorney General of the United States coming in there and there could be assigned counsel on the other side. Do they balance out evenly?

Mr. TINDER. Well, they should in terms of the advocacy. That is the purpose of assigning counsel to represent indigents and to permit those who can employ counsel——

Senator LEAHY. No. I mean, in your view, are you able to step back and shut off the fact that you used to be the government's at-

torney and realize now that the government's attorney is simply one of the advocates before your bench?

Mr. TINDER. I should, Your Honor, or Mr. Chairman. I am so used to being in court.

Senator LEAHY. I know the feeling.

Mr. TINDER. And you are honorable. [Laughter.]

Senator LEAHY. Only by title. Go ahead. [Laughter.]

Mr. TINDER. As Senator Lugar pointed out, I did serve as a public defender for a period of time. It was actually closer to 2 years. In addition to that, I accepted appointments in Federal court and served as private counsel for an additional 2 years in some criminal cases. So I have seen that side of criminal prosecutions and the needs of defendants and the purpose and benefits that can be gained from that advocacy.

And I would hope that I could be fair in presiding over criminal cases. As you know as a former prosecutor, there is a significant element of fairness in charging decisions and in sentencing recommendations and in evaluating which cases to proceed on and which not to proceed on.

So I feel qualified in that regard and do not feel that I would be viewed as a prosecutor's judge or anything of that sort.

Senator LEAHY. We also have some other questions here for the record that refer to your age. You would not be the youngest Federal judge, but darned near. I was going to ask them with reference to the fact that you would be 37 going on the bench, but having been only 34 when I came to the U.S. Senate, we will just submit them for the record.

[The aforementioned material follows:]

SUPPLEMENTAL QUESTION ON NOMINATION OF
JOHN D. TINDER AS UNITED STATES DISTRICT JUDGE
FOR THE SOUTHERN DISTRICT OF INDIANA

AGE AND EXPERIENCE

You are 37 years old, and have been a member of the bar for 12 years. If you are confirmed, you will be one of the youngest federal judges in the nation, and one of the least experienced in terms of number of years at the bar.

What factors in your background and experience best demonstrate that you have the maturity to serve effectively as a United States District Judge?

ANSWER

From the earliest years of my career as a trial attorney, I have been responsible for important and complex cases. In the civil and criminal areas, and in governmental service and private practice, I have been the sole or primary counsel in major criminal prosecutions and in civil trials with millions of dollars at stake. I have experience not only as a prosecutor, but also as a public defender. In my civil practice, I have represented plaintiffs as well as defendants. In addition to significant trial practice (a large percentage of which has been in the federal courts), I also have extensive state and federal appellate experience.

In the twelve years I have been in practice, I have opposed Indiana's most prominent litigators, the vast majority of whom are older than I am. My litigation experience exceeds that of more senior lawyers in this area. In fact, the breadth, volume and complexity of the matters I have handled have given me concentrated experience well beyond my 37 years. My peers' recognition of my maturity and experience is illustrated by my selection as second in command of Indiana's largest county prosecutors office at the age of 28, and by my appointment as United States Attorney at the age of 34. Even though I was one of the nation's youngest U.S. Attorneys, I was chosen to serve on the Attorney General's Advisory Committee, a select group of federal prosecutors who advise and consult with the United States Department of Justice and other federal agencies on important law enforcement issues and with regard to critical matters affecting the civil representation of the United States Government. My colleagues on the Attorney General's Advisory Committee elected me Vice Chairman of that group. Finally, in recognition of my standing and experience as a courtroom advocate, the Indiana University School of Law at Indianapolis appointed me Adjunct Professor of Trial Practice six years ago, at the age of 31.

The variety and intensity of my experience -- as a civil advocate, public defender, prosecutor, professor and administrator -- and my demonstrated ability in dealing with my opponents in litigation should be the measure of my maturity and qualification for the district court bench.

John Daniel Tinder

Subscribed and sworn to before me, a notary public, this 1st day of August, 1987.

Janet E. Ellis
Notary Public

My Commission Expires:

August 29, 1988

My County of Residence:

Marion

Senator LEAHY. Senator Thurmond.

Senator THURMOND. Thank you very much.

I want to congratulate you upon your appointment by the President.

Mr. TINDER. Thank you, Senator.

Senator THURMOND. I think you have been appointed to the best job in the United States, a Federal trial judge. You get the romance of the courtroom. If you like to try cases as a lawyer, this will be exceedingly interesting to you.

Mr. Tinder, how would you resolve a conflict between your own conscience or your own sense of justice and the clear meaning of a statutory or constitutional provision?

Mr. TINDER. Senator, as difficult as it might be on a personal basis or as repugnant as it might be to my own personal beliefs, in any instance like that I would be obligated to follow the statutory or constitutional provision.

Senator THURMOND. How does a responsible judge go about the process of interpreting such seemingly open-ended constitutional provisions as the due process or equal protection clauses?

Mr. TINDER. Senator, certainly the initial starting point is the language of the fifth amendment and the 14th amendments. Beyond that, and language as general and broad as that language is very difficult to reach a result with, one would have to look at the constitutional history of those particular amendments.

I suppose the Federalist Papers are indicative with respect to the fifth amendment in some respects, and the constitutional history of the 14th amendment would be of some guidance, and certainly the manner in which other courts, particularly the U.S. Supreme Court, have interpreted those provisions would be of great weight in evaluating that.

Senator THURMOND. I hope you have a happy tenure on the bench. I have nothing else.

Mr. TINDER. Thank you, Senator.

Senator LEAHY. Thank you very much.

Mr. TINDER. Mr. Chairman, with respect to my age, I would like to point up one minor thing. As both you and your colleague—you both appear to be much younger than you are and I think people say that about me from time to time.

Senator LEAHY. Careful, careful. You are under oath, but go ahead. [Laughter.]

Mr. TINDER. But one of the two judgeships——

Senator THURMOND. Talk on. [Laughter.]

Mr. TINDER. One of the two judgeships for which I was nominated is for now senior Judge William E. Steckler, who was appointed to the bench in 1950 when he was 35 years of age under President Truman. So it is not unprecedented in our district to have judges in their 30s nominated.

Senator LEAHY. When I was first elected to the Senate, I was going around making my courtesy calls to various senior members of the Senate and I went to see a man whom Senator Thurmond knows very well, because both of them served in two of the same prestigious positions, both Chairman of the Judiciary Committee and President Pro Tem. Of course, that was Senator Jim Eastland of Mississippi, a good friend of both of us, now departed.

I went to see Senator Eastland and he looked me in the eye and he said, "boy, how old are you?" I did not think it very professional to say 34-and-a-half, so I said, "well, I will be 35 next year, Mr. Chairman." And he asked me if I had not had some people say I might be too young to be in the U.S. Senate. I admitted that was so—a number of people had said that, including the man I had run against for the job.

And then he told me, "you know, when I first came here from Mississippi I was 35 years old and a lot of people told me I was too young." He said, "since then I have buried them all, so do not pay them any mind." [Laughter.]

I wish you that same kind of long, pleasant tenure on the bench. Thank you very much.

Mr. TINDER. Thank you, Mr. Chairman.

Senator THURMOND. I could not quarrel with you about the age. I was elected as a judge by the General Assembly of South Carolina when I was 35. You are 37, are you not?

Mr. TINDER. Yes, sir.

Senator THURMOND. Congratulations.

Mr. TINDER. Thank you.

Senator LEAHY. Justice Wolle?

Justice Wolle, if you would raise your right hand, do you solemnly swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Judge WOLLE. I do so swear.

Senator LEAHY. You are now a Justice of the Iowa Supreme Court. You have been nominated to go to the trial court. Very often, as we had today, for example, in the hearing with Judge Scirica, we talk about going the other way, from the trial to the appellate court. Now you are going from the State appellate to the Federal trial court.

How does that feel to you? How do you feel those experiences as a justice of your State supreme court will help you on the Federal trial court level?

TESTIMONY OF HON. CHARLES R. WOLLE, DES MOINES, IA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA

Judge WOLLE. I look forward to the challenge of the trial bench and believe that what I have learned and experienced as an appellate judge will help me a great deal. I was a very active trial lawyer for 20 years before I was for 2 years a trial judge, so I have had a lot of experience in the trial court.

Frankly, I look forward to having the mix of research and writing as a Federal trial judge, together with the person contact. I am, if I may use the phrase, a people person, and I think working with jurors and firsthand contact with the litigants will be something I will enjoy very much.

Senator LEAHY. Well, you mentioned in your background that you have tried over 200 cases, and I would assume that you have probably settled many, many times that if your practice was at all typical.

Judge WOLLE. Yes. The success came when I settled and anticipated well in advance that it was a case that would be settled. I would guess five to one in terms of substantial case settlements to trials.

Senator LEAHY. I am glad to hear that. I think that is an important part of a lawyer's experience that cannot be underemphasized here, especially if that lawyer is going to go on a trial court bench. There is no question that a judge has more and more involvement in helping to settle cases, in the sense of bringing parties together when requested and getting involved in the settlement process. So I think it is something that could well be looked at as part of the experience.

Incidentally, in the haste to swear you in and get on to the questions, I neglected your family. Would you please introduce any members of the family here?

Judge WOLLE. I would be delighted to. First of all, my wife, Kerstin, and four boys, Karl, Erik, Thomas, and Aaron, are back in Iowa hard at work. The oldest is in law school, but working very hard there. The youngest has a couple of summer jobs; he is in high school.

Representing my family personally here, however, I am delighted to introduce my brother, Ambassador William Wolle, and his wife, Mimmi Torlen Wolle. My brother has been ambassador in two countries in the Middle East. I am very, very proud of my brother.

And representing my friends, if I may say so, is my college roommate for 4 years, Colonel George Douse, who was my roommate for 4 years, and he is here with his wife, Dorothy, and his daughter, Melissa.

Senator LEAHY. We welcome you all here and are delighted to have you here. Mr. Ambassador, you have gone through the confirmation proceeding before, so you can have a chance to tell your brother what to expect—grueling, searching questions from the bench.

Yes, sir?

Judge WOLLE. Excuse me, Mr. Chairman. I would also like to mention, as did Senator Grassley, that my parents are 94 and 90. They are certainly here in spirit, but could not be here in person. They are back in Sioux City.

Senator LEAHY. Well, I think that is wonderful, and I suspect that they are awfully proud and I am sure they will be looking forward to a phone call back from you tonight. I know that Senator Grassley spoke at length about you before I came in, and Senator Harkin, who serves with me on the Senate Agriculture Committee, made it a point also to speak very highly of you before I came in.

So, Senator Thurmond, I will yield to you, sir.

Senator THURMOND. Thank you.

I presume you are recommended by Senator Grassley. We think very highly of him. He is a member of this committee, and I congratulate you upon your appointment by the President.

Judge WOLLE. Thank you, Senator Thurmond.

Senator THURMOND. Justice Wolle, what are the standards that you would use in deciding that your court had a continuing administrative responsibility to oversee the implementation of one of its orders?

Judge WOLLE. I believe that the court, once the order is entered, should monitor and make sure it is being enforced. I think that the court should, of course, look to the executive branch to see that law and order is maintained with respect to orders that are entered.

Of course, the U.S. Marshals Service would provide invaluable service. But, essentially, I believe that the court has a duty to see that the order is carried out as between the parties and that it does not necessarily impinge on persons who were not parties in the action.

Senator THURMOND. Judge Wolle, where, in your view, does a conscientious judge draw the line between judicial decisionmaking and legislative decisionmaking, and what are the criteria that you would consider in resolving whether or not a decision was the type that should be made by a judge as opposed to an elected legislative body?

Judge WOLLE. As an experienced trial lawyer, I focus on the parties before the court and the law as applied to those parties. I believe that when in doubt in terms of whether it is the court's appropriate function or whether it is a matter that the legislature has as its proper role, the court should yield to the democratic process and to the legislative body.

I guess in terms of activism or restraint, as that is a spectrum, I would be at the restraint end of the spectrum.

Senator THURMOND. I wish you a happy tenure on the bench.

I have nothing else, Mr. Chairman.

Senator LEAHY. Thank you very much, Senator Thurmond.

Judge WOLLE. Thank you very much.

Senator LEAHY. Thank you very much, Mr. Wolle.

Mr. Ellis, would you step forward and would you raise your right hand? Do you solemnly swear that the testimony you shall give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. ELLIS. I do.

Senator LEAHY. And you also have family here. I know you have introduced them once before, but just for the record of this proceeding, could you do it again, please?

TESTIMONY OF T.S. ELLIS III, RICHMOND, VA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

Mr. ELLIS. Yes, sir. Thank you, Senator. I should like to introduce to the committee my wife, Martha Ann, who is here.

Senator LEAHY. How do you do?

Mr. ELLIS. I also wish to introduce the other members of my family who are here today. My mother, Mrs. Woodard; my two sons, Alexander, who is 15, and Parrish, who is 12. And we have two house guests from Paris—perhaps they win today's long-distance award—Charles and Benjamin Patou.

Senator LEAHY. From Paris?

Mr. ELLIS. Yes, sir, they are spending a portion of the summer with us in Virginia.

Senator LEAHY. Bien venue.

Mr. ELLIS. If I may, Senator, I also have two law partners here today whom I want to recognize and introduce to the committee,

Taylor Reveley from Richmond, and John Adams from Washington; and a former law partner, Tony Earley, who is here from New York.

Senator LEAHY. Well, we thank you all very, very much for being here. I am delighted that these young men have a chance, also, to be here visiting our country. I might note in that regard you have had the time to attend Oxford on sabbatical.

I was at Magdalen College back about 3 or 4 weeks ago with my wife and daughter just walking through there and having a delightful time. The day before it had been terribly rainy. We got down to Oxford and the sun came out and it was gorgeous. We walked around and I mentioned how much I wish we had a similar thing here, but the sabbaticals we get in the Senate tend to come with great surprise usually some time in the first week of November.

Also, please tell my neighbor and friend, Governor Robb, that you were here today.

Mr. ELLIS. I will, indeed.

Senator LEAHY. Let me go into an area that interests me. You are a litigator. You have done a lot of litigation in one of Virginia's largest law firms, but you have been involved in a lot of pro bono activities. Tell me about that. How do you get involved in pro bono activity? What would you consider your most significant pro bono activity?

Mr. ELLIS. Well, I think I consider my most significant pro bono activity to be the work that my wife and I have done with Vietnamese refugees. I have also done pro bono work in connection with representation of indigents in criminal trials in Federal court.

It has always been my view that it is absolutely essential that legal services be provided to the entire spectrum of the population and that the private bar has an obligation to provide these services. I would prefer to see the private bar furnish these services rather than to have bureaucracies established to do it.

I have learned a great deal in my pro bono work and gained a lot from it and made some very good friends, particularly among the Vietnamese. I think the Vietnamese work would be the most significant, but I must say that, however much time—and I have spent a very large amount of time on that; my wife has spent at least twice, if not three times that amount of time on refugee resettlement work.

Senator LEAHY. Is this a general practice within your firm to set time aside for pro bono work or is this something you have been specifically involved in?

Mr. ELLIS. No, sir, it is not limited to me. The firm encourages all lawyers, particularly the younger lawyers, to become involved in pro bono work both through the Bar Association of the City of Richmond and through the Federal court, and we have recently been discussing among ourselves and with the Virginia Poverty Law Center a means of institutionalizing large firm participation in pro bono work.

Senator LEAHY. I remember the first law firm I went to out of law school. There was a tough, conservative senior partner and he just absolutely insisted that everybody, himself included, devote a

specific amount of time to pro bono work, probably more than just about any other law firm in the State.

He drilled this into every one of us lawyers there. He said, "no matter how long you stay in the law, do not forget you have got an obligation to give some of this back." I agree, and I just hope that more and more lawyers will realize that.

You have also talked about the complex cases you have tried, the protracted proceedings before the Nuclear Regulatory Commission involving a nuclear power plant in New York State. I am glad to see that kind of experience because I think the Federal courts are getting more and more complex cases.

Senator THURMOND. There is a vote on.

Senator LEAHY. Thank you.

Again, I would strongly urge the administration in looking for nominees and Senators in recommending people for the bench that they look to those lawyers who have had some experience in such complex cases. We are getting more and more of them not just in the district you would be going to, but throughout the country.

I have some questions I will submit for the record.

[Aforementioned material follows:]

RESPONSE TO SUPPLEMENTAL QUESTIONS

T. S. Ellis, III
Hunton & Williams
P.O. Box 1535
Richmond, Virginia 23212
(804) 788-8453

July 24, 1987

RESPONSE TO SUPPLEMENTAL QUESTIONS

(1) **In your response to the Committee's questionnaire, you describe some of the complex cases you have tried such as the protracted proceeding before the NRC involving a nuclear power plant in New York State. As a judge, you will be called upon to manage complex litigation fairly and expeditiously. What have you learned from your experience in trying complex cases that will be of most assistance to you in presiding over such cases?**

My experience in trying complex cases has led me to conclude that it is vitally important that judges act purposefully and firmly to manage these cases. Complex litigation must be carefully planned. It is not enough simply to permit the parties to move the litigation at the pace they choose and in directions they choose, for there is invariably no agreement on pace or direction.

The Manual for Complex Litigation (1985) identifies the important principles underlying management of complex litigation. First, there must be early identification and control of such litigation. This, in my experience, can be achieved only by the assignment of the case to a single judge. It is also my experience that a judge can avoid significant delay by careful and focused use of magistrates and masters. My experience also suggests that appropriate supervision of complex litigation typically calls for the imposition of a schedule and deadlines for completion of discovery, depositions and certain trial testimony. Reasonable limits on the length of depositions and trial testimony may also be appropriate.

One of my experiences vividly illustrates this. In an NRC proceeding, cross-examination by one party threatened to go on interminably. The judge, recognizing this, imposed a limit on the time counsel would have to cross-examine certain witnesses. The judge instructed counsel to do the best he could in the time allotted and the judge would then reconsider whether additional time was warranted. Under this discipline, cross-examining counsel took care to get to the heart of the matter rather briskly and the cross-examination was completed in a matter of weeks, rather than months.

My experience in complex, multi-party litigation also underscores the necessity to select with care the lead or liaison counsel and committees. It is also my experience that fair and expeditious proceedings, at mininum expense to the court and the parties, occur only where the supervising judge makes unmistakably clear at the outset his or her determination to tolerate no unwarranted deviation from deadlines, nor any refusal on the part of all counsel involved to cooperate wherever possible and to behave with courtesy and civility.

(2) **In 1984, you took a sabbatical leave from your law firm which you spent as a Temporary Member of the Senior Common Room at University College, Oxford University. Specifically, what did you do during your sabbatical year, and how will this experience aid you in performing your duties as a United States District Judge?**

My sabbatical at University College, Oxford, was devoted to reading, reflecting, discussing and teaching in the areas of evidence and Fourth and Fifth Amendment constitutional issues in criminal procedure. In this connection, I helped teach an evidence seminar for graduate students. The seminar was led by a Fellow of University College, Oxford, who in years past had been a classmate of mine at Oxford. My limited role was to give talks to the students on the development of constitutional issues under the Fourth and Fifth Amendments so that they might compare the development of law in these areas in the United States with the analogous law in the United Kingdom. Quite apart from the benefit of having been able to read and reflect on important issues of constitutional law, the opportunity for a focused and rigorous review of current search and seizure and confession issues should prove helpful if I am confirmed. As a result of the sabbatical, I will not only be more familiar with these issues, but I will also have a comparative perspective that will prove useful. In addition to the constitutional search and seizure and confession issues, I also devoted a substantial amount of time to certain of the Federal Rules of Evidence that were of interest to the students in the seminar, including, specifically, the rules relating to the admissibility of evidence of criminal convictions and past bad acts.

Beyond the time devoted to the evidence seminar, I also spent a substantial amount of time reading and discussing with faculty members various issues in the areas of jurisprudence and medical-legal issues. In jurisprudence, I focused chiefly on whether there exists a determinative link between theories of ethics on the one hand, and theories of law on the other. I was privileged to have a number of discussions on these topics with Professor H. L. A. Hart (University College), Joseph Raz (Balliol College) and Adrian Zuckerman (University College). In the medical-legal area, I did comparative research on treatment decisions related to severely afflicted newborns and spoke on this subject at Notre Dame's Law School in London and at London's Hammersmith Hospital. In addition, I spoke to groups of barristers and solicitors in Birmingham concerning several aspects of American litigation, including discovery and jury trials.

(3) **Your resume as a practitioner is impressive, but there is one experience that it does not include. You have never before been a judge, nor have you occupied any quasi-judicial post. What do you think will be the most challenging aspect of putting aside your career as an advocate and assuming a new role as a judge?**

If I am confirmed, many challenges await me as a judge. I have, however, had a glimpse of some of these by virtue of my service as an arbitrator on the American Arbitration Association's Panel of Arbitrators. In this capacity, I have arbitrated a number of construction cases, in some instances as sole arbitrator and, in others, as chairman of a panel of three arbitrators. This experience and my trial experience suggest to me that maintaining impartiality and the appearance of impartiality constitute one of the principal challenges I will face in assuming the judicial role. Trial lawyers always and everywhere are enthusiastic advocates for one or another cause. This zealous advocacy is the antithesis of judicial behavior. Far from being an advocate, judges must be wholly disinterested and impartial. Equally important, judges must appear to be so. As Lord Devlin cogently noted, an impartial judge may reach the right result for which he may be blessed in heaven, but on earth he is worthless unless he also appears impartial and appears to do justice. Thus, an important challenge to a trial lawyer who assumes a new role as judge is to be ever mindful that impartiality and the appearance of impartiality, not zealous advocacy, are the essence of a judge's role.

My experience as an arbitrator has also taught me that a judge must be a skilled and patient listener, a talent not often thought central to advocacy. In this vein, one experience I had as an arbitrator stands out. In a construction case in which I sat as a sole arbitrator, one counsel sought to put on evidence by an expert witness which seemed to me to be unnecessary and not very probative. Nonetheless, I agreed to hear the testimony within strict time limits, thinking that I might be wrong and that the party should feel that he had had his day in court. As it happened, the testimony proved relevant and probative, thereby teaching me the lesson that judges must listen attentively to the evidence and avoid premature judgments.

Finally, I am also specially mindful of a judge's responsibility to decide cases based on the facts and laws, not on the skills or brilliance of the lawyers arguing the cases.

AFFIDAVIT

I, T. S. Ellis, III, swear that the information provided in this statement is true and correct to the best of my knowledge.

T. S. Ellis, III

Cassandra D. Reynolds
Notary Public

My Commission Expires August 3, 1990

July 24, 1987

Senator LEAHY. I want to yield to Senator Thurmond, who has noted that we have a 15-minute roll call vote, and maybe we can complete this before we vote.

Senator THURMOND. Thank you very much.

Mr. Ellis, I want to congratulate you upon being appointed by the President to be a U.S. District judge for the Eastern District of Virginia.

Mr. ELLIS. Thank you, Senator.

Senator THURMOND. I also want to congratulate the State of Virginia for having a man like you to go on the bench.

Mr. ELLIS. Thank you, Senator.

Senator THURMOND. Sometimes I wonder, though, if such a good lawyer like you maybe should not go on the bench, just stay and serve the people as a lawyer. But at any rate, I wish you well.

Mr. ELLIS. Thank you.

Senator THURMOND. I believe you have tried some cases in my State.

Mr. ELLIS. Yes, sir, I have. It was a great pleasure.

Senator THURMOND. You made a fine impression down there.

Mr. ELLIS. Thank you.

Senator THURMOND. I just have two questions. The phrase "judicial activism" is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority.

What does the phrase "judicial activism" mean to you?

Mr. ELLIS. Well, it has a number of meanings, but I think that is the meaning it would have to me, which is that a judge should not usurp functions which are not part of the judicial function and I would certainly seek to avoid that.

Senator THURMOND. Now, are there ever any circumstances where you would consider it appropriate to decide a case on some basis other than one where the intent of the framers of legislation or constitutional provisions can be detected either through the text of a provision or its surrounding legislative history?

Mr. ELLIS. Not that I can think of, Senator.

Senator THURMOND. I wish you well on the bench. I hope you have a happy tenure of service on the bench.

Mr. ELLIS. Thank you very much, Senator Thurmond.

Senator LEAHY. Mr. Ellis, there are other questions and I will submit them for the record.

We have kidded a little bit about those recommending you, but I should emphasize again as I did before, that Senator Warner and Governor Robb both went out of their way to talk to me personally about you. Their statements were very strong and very positive ones, and they are not people known to do that just for the heck of it. I think that has had a significant impression on me, and I know on Senator Thurmond.

Mr. ELLIS. Thank you.

Senator LEAHY. I thank you very much for being here.

Mr. ELLIS. Thank you, Senator Leahy.

Senator THURMOND. Mr. Chairman, I think you have handled it well and I have enjoyed being with you.

Senator LEAHY. Thank you. Strom, if you could just hold a minute, I want to publicly thank Steve Metalitz from my staff who has worked very, very hard in trying to move these along.

Strom, I want to thank you and Duke and the others who have worked hard with us to try to get these through. We have been in the last several weeks in situations where we have had early morning to midnight sessions in the Senate. We go home at midnight, but a lot of the staff stays here after we leave and they have been working very hard to get these hearings together.

Sometimes the public does not realize this. We may just ask two or three questions here, but hours and hours, and sometimes days of work by the staff, by people like Steve Metalitz and others, have gone into making it possible to say nothing about all the time that the nominees have taken in answering our questionnaires.

I just wanted to note for the record that if it was not for the superb staff we have here in the Judiciary Committee, we would not be able to move along this quickly. I want to thank you, Strom, for all your cooperation.

Senator THURMOND. Thank you, Mr. Chairman. I am wondering if we could get them on the next agenda before the full committee, those six we have heard today.

Senator LEAHY. Let me speak with the Chairman and move just as quickly as we can.

Senator THURMOND. Thank you very much.

Senator LEAHY. We stand in recess.

[Whereupon, at 4:14 p.m., the committee was adjourned.]

QUESTIONNAIRE FOR JUDICIAL NOMINEES
Jerry E. Smith

I. BIOGRAPHICAL INFORMATION

Question No. 1: Full name (include any former names used).

Jerry Edwin Smith.

Question No. 2: Address: List current place of residence and office address(es).

Home address:
Mailing address: P.O. Box 13608
Houston, TX 77219

Physical address: 1518 Fairview St.
Houston, TX 77006

Office address:
Mailing address: City of Houston Legal Department
P.O. Box 1562
Houston, TX 77251

Physical address: Legal Department
4th Floor, City Hall
901 Bagby St.
Houston, TX 77002.

Question No. 3: Date and place of birth.

November 7, 1946; Del Rio, Texas.

Question No. 4: Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Mary Jane Blackburn Smith (no occupation).

Question No. 5: Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Yale University, September 1965 through June 1969, B.A. 1969;
Yale Law School, September 1969 through June 1972, J.D. 1972;
Texas Tech University, summer term 1966.

Question No. 6: Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1969-70: Agricultural Stabilization & Conservation County Committee, Crosby County, Texas;
1970-72: Yale Law School Book Exchange;
1971: Fulbright, Crooker & Jaworski (currently Fulbright & Jaworski);
1972-73: Law Clerk to the Honorable Halbert O. Woodward;
1973-84: Fulbright & Jaworski;
198;-present: Professional Audio Video Corporation;
1984-present: City of Houston, Texas;
1985-present: Calvin C. Mann Trustee Partnership.

Question No. 7: Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

Question No. 8: Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

Question No. 9: Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association;
State Bar of Texas;
National Institute of Municipal Law Officers;
Texas City Attorneys Association;
Advisory Board, Municipal Legal Studies Center, Southwestern Legal Foundation;
Houston Bar Association;
Committee on the Bicentennial of the Constitution, Houston Bar Association;
Houston Young Lawyers Association;
Texas Young Lawyers Association.

Question No. 10: Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong (such as civic, educational "public interest" law, etc.).

The City of Houston, Texas (active in lobbying);
Republican Party of Texas.

Question No. 11: Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

United States Supreme Court, 1986;
United States Court of Appeals for the Fifth Circuit, 1975;

Question No. 11 (continued):

United States Court of Appeals for the Eleventh Circuit, 1981;
United States Temporary Emergency Court of Appeals, 1979;
United States District Court for the Northern District of Texas, 1973;
United States District Court for the Southern District of Texas, 1975;
Texas Supreme Court, 1972.

Question No. 12: Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written. Please supply a copy of any significant speech by you on constitutional law or national policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"Government Documents: Their Copyright and Ownership," American Society of Composers, Authors & Publishers (A.S.C.A.P.), Copyright Law Symposium Number Twenty-two, at 147 (1977).

Question No. 13: Health: What is the present state of your health? List the date of your last physical examination.

Excellent; March 20, 1987.

Question No. 14: Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

For two years, from April 1982 through March 1984, I was the Chairman of the Civil Service Commission of the City of Houston. This is a quasi-judicial position that calls upon the same skills and qualities that

Question No. 14 (continued):

are required of a trial judge.

The Civil Service Commission is a three-member fact-finding body that hears appeals from disciplinary actions (suspensions and firings) taken against City employees. The Commission conducts evidentiary hearings and renders orders and opinions in which it sustains, overturns, or modifies the disciplinary action in question.

As Chairman, I presided over all hearings and made all evidentiary and procedural rulings. The hearings are adversarial: The employee can be represented by an attorney or union representative, or can appear pro se; the City is represented by an Assistant City Attorney. The hearings are public and are conducted generally according to the rules of evidence and procedure common in district court. There is limited pre-trial discovery. Depending upon the nature of the disciplinary action, the witnesses may be sworn, and a court reporter may be present. An individual hearing can last from a few minutes to several days.

While I was Chairman, the Commission met approximately three days (whole or partial) per month and heard hundreds of appeals, some of which received considerable public attention. Although not technically a judicial position, I believe the Commission Chairmanship is a fair test of judicial temperament, fairness, efficiency, knowledge of evidentiary and procedural rules, judgment, sensitivity to minority and employee concerns, and other similar qualifications.

Question No. 15: Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state

Question No. 15 (continued):

constitutional issues, together with the citation to appellate court rulings on such opinions.

Although the orders of the Civil Service Commission are subject to review by state and federal courts, I am not aware of any opinions that have reversed or criticized rulings made by the Commission under my Chairmanship.

Question No. 16: Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1. Member, Board of Directors, Harris County Housing Authority. This is a position appointed by the Harris County Commissioners Court (the governing body of the county). I served from approximately 1978 to 1980.

2. Chairman, Civil Service Commission, City of Houston, Texas. This is a position appointed by the Mayor and confirmed by City Council, for a two-year term. I was appointed to an unexpired term in April 1982 and was reappointed to a full term in August 1983. I resigned in April 1984 to accept the position of City Attorney.

3. City Attorney, City of Houston, Texas. This is a position appointed by the Mayor, confirmed by City Council, and serving at the pleasure of the Mayor. I have served in this position from April 23, 1984, to the present.

I have never run for elective public office.

Question No. 17: Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

Question No. 17 (continued):

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

Law Clerk to the Honorable Halbert O. Woodward, United States District Judge (currently Chief Judge) for the Northern District of Texas, August 1972 through July 1973;

Attorney, Fulbright & Jaworski, 1301 McKinney St., Houston, TX 77010, October 1973 through April 1984 (Partner, June 1981 through April 1984);

City Attorney, City of Houston, P.O. Box 1562, Houston, TX 77251, April 1984 to the present.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

As a beginning associate with Fulbright & Jaworski, I did real estate work from late 1973 through mid-1974.

From mid-1974 through early 1979, I engaged in a general litigation practice, with emphasis on antitrust and other federal litigation. Beginning in mid-1975, I devoted a large percentage of my time to the defense of a new antitrust case representing an international trading company. I also worked a docket of tort (insurance defense) and general litigation cases. Other antitrust

Question No. 17 (continued):

clients included a bank and a major oil company.

From early 1979 through mid-1981, I concentrated on federal energy litigation. Primarily, this consisted of working with groups of attorneys in various law firms representing major oil companies in lawsuits regarding the interpretation and enforcement of United States Department of Energy price and allocation regulations. During this time, I continued to devote substantial amounts of time to the antitrust case that had begun in 1975.

From mid-1981 through early 1982, I spent the vast majority of my time representing the Texas Department of Corrections in the Texas federal prison litigation. While still a partner with Fulbright & Jaworski, I was designated a Special Assistant Attorney General, State of Texas, for this purpose.

From mid-1982 through April 1984, I continued a federal energy litigation practice, combined with continuing antitrust work for an international trading company and a national car rental agency.

From early 1982 through March 1984, while still engaged in private practice, I also served as Chairman of the Civil Service Commission of the City of Houston.

From April 1984 to the present, I have been the City Attorney of the City of Houston, leaving private practice for the purpose of accepting such appointment. In addition to the overall management of the City of Houston Legal Department, and supervision of approximately 60 attorneys handling the City's legal affairs, I have actively and personally participated in the briefing and trials of certain state and federal lawsuits involving constitutional and other issues.

As City Attorney, I personally approve all of the City's lawsuit and claims settlements (tort and otherwise) and recommend such settlements to City Council for formal action. Also, as the City's legal counsel, I regularly advise the Mayor, the City Council (attending most weekly Council meetings), and City department heads on matters of municipal and constitutional law, both civil and criminal.

Question No. 17 (continued):

I have overall supervision of attorneys who prosecute misdemeanor criminal offenses in Municipal Court. Moreover, I assist with the City's legislative program.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Occasionally. Actual appearances in court have increased somewhat since I have been City Attorney, during the past three years.

2. What percentage of these appearances was in:

(a) federal courts.
Approximately 50 percent.

(b) state courts of record.
Approximately 50 percent.

(c) other courts.
Infrequent appearance in Municipal Court.

3. What percentage of your litigation was:

(a) civil.
Almost 100 percent.

(b) criminal.
Infrequent appearance in Municipal Court.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Three jury cases tried to a verdict, as sole counsel.

Question No. 17 (continued):

5. What percentage of these trials was:

(a) jury.
100 percent.

(b) non-jury.
None.

Question No. 18: Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Dorchester Gas Producing Co. v. Department of Energy, 582 F. Supp. 911 (N.D. Tex. 1983), reconsideration denied, 582 F. Supp. 927 (N.D. Tex. 1983), review on certified question sub nom. Exxon Corp. v. Department of Energy, 744 F.2d 98 (Em. App. 1984), aff'd in part, rev'd in part sub nom. Exxon Corp. v. Department of Energy, 752 F.2d 650 (Em. App. 1984), cert. denied, 469 U.S. 1077 (1984) and 471 U.S. 1099 (1985).

This declaratory judgment action was filed by major petroleum refiners, challenging the Department of Energy's interpretation of certain price regulations regarding natural gas liquids. Specifically, the plaintiffs challenged the agency's method of calculating increased

Question No. 18 (continued):

product costs that could be passed through to customers during the period of federal energy price controls. Plaintiffs also challenged the constitutionality of the Emergency Petroleum Allocation Act of 1973 on the ground that it contained an unlawful one-house legislative veto provision. At stake were several hundred million dollars in product costs.

I was heavily involved in this case from early 1979 through April 1984, working with a team of attorneys from various firms, representing numerous refiners. I was the second-ranking attorney representing Exxon Corporation (excluding in-house counsel). My personal involvement included hundreds of hours in preparing briefs and pleadings; presenting extensive oral arguments in district court; legal research; document review; complex discovery disputes; and participation and assistance in coordinating strategy among multiple plaintiffs.

The case was heard on motions for summary judgment, including two lengthy oral arguments in 1983, before the Honorable Halbert O. Woodward, Chief Judge, United States District Court for the Northern District of Texas. Plaintiffs' motion for summary judgment was granted in part. On appeal, the Temporary Emergency Court of Appeals decided all issues favorably to the Department of Energy.

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Question No. 18 (continued):

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2. Hill v. City of Houston, 764 F.2d 1156 (5th Cir. 1985), on rehearing en banc, 789 F.2d 1103 (5th Cir. 1986), probable jurisdiction noted, 55 U.S.L.W. 3231 (Oct. 7, 1986).

In this case, the plaintiff challenged the constitutionality, on First Amendment grounds, of a City of Houston ordinance that makes it a misdemeanor offense to assault, strike, oppose, molest, abuse, or interrupt a police officer in the performance of the officer's duties. The District Court, after a trial, found the ordinance constitutional.

Question No. 18 (continued):

A divided panel of the Court of Appeals reversed. On rehearing en banc, the Court of Appeals again reversed the District Court. The Supreme Court noted probable jurisdiction and heard oral arguments on March 23, 1987.

I did not participate in the case until the Supreme Court granted review. I wrote the vast majority of the City's principal brief on the merits and a substantial portion of the City's reply brief. Although oral argument was presented by one of my assistants, I attended oral argument with that assistant and participated extensively in the preparation for the oral presentation.

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3. Industrial Investment Development Corp. v. Mitsui & Co., 594 F.2d 48 (5th Cir. 1979), cert. denied, 445 U.S. 903 (1980), appeal after remand, 671 F.2d 876 (5th Cir. 1982), cert. granted, judgment vacated and remanded, 460 U.S. 1007 (1983), on remand, 704 F.2d 785 (5th Cir. 1983), cert. denied, 464 U.S. 961 (1983), appeal pending following remand.

This antitrust action was brought by certain forest products companies against Mitsui & Co., Ltd., and its American subsidiary, asserting that defendants monopolized the production of logs in an area of Indonesia by dislodging plaintiffs from a forestry concession agreement. Plaintiffs sought approximately $150 million in treble damages under sections 1 and 2 of the Sherman Act and under breach of contract and tort theories.

Fulbright & Jaworski represents the defendants. I was heavily involved in this case constantly from its inception in 1975 through my leaving private practice in April 1984. Specifically, I have done the major part of the briefing (prior to my departure); have prepared countless pleadings; have participated in voluminous discovery;

Question No. 18 (continued):

have taken part in lengthy depositions (including some abroad); and have been intimately involved in the strategy and preparation of the case.

Twice, the District Court granted summary judgment for defendants, and twice the Court of Appeals reversed and remanded. After I had left private practice, the case went to trial in early 1985. The jury rendered a verdict for defendants. The case is now pending on appeal. The district judges who have presided over this case, at one time or another, are the Honorable Carl O. Bue, the Honorable Ross Sterling, and the Honorable John Singleton, all in the United States District Court for the Southern District of Texas.

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4. Ruiz v. Estelle, 503 F. Supp. 1265 (S.D. Tex. 1980), stay denied in part, granted in part, 650 F.2d 555 (5th Cir. 1981) and 666 F.2d 854 (5th Cir. 1982), aff'd in part, rev'd in part, 679 F.2d 1115 (5th Cir. 1982), modified in part, vacated in part, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983).

This is the Texas prison reform litigation, in which the plaintiff alleged that the crowding, medical care, discipline, and other conditions in Texas prisons violated the Eighth Amendment. Fulbright & Jaworski was retained to represent the State of Texas in July 1981, after a lengthy decree adverse to the State had been en-

Question No. 18 (continued):

tered by the trial court and only two months before the appellate brief was due to be filed. I, and certain other firm attorneys, were appointed Special Assistant Attorneys General to prepare the brief and reply brief and to assist in post-judgment district court compliance hearings. I was one of four firm partners who organized and managed the team of attorneys who, in two months, conducted a complete review and digest of the 159-day trial record and prepared the 123-page brief and the reply brief.

I was thoroughly involved in the drafting, research, and management of the briefing effort and preparation for oral argument. Thereafter, I assisted in the preparation for post-judgment hearings that determined, in part, the State's compliance efforts and the precise terms of the District Court's remedial orders.

The Court of Appeals left much of the original decree intact but reversed it in certain important respects. Significantly, the Court of Appeals permitted continued use of double-celling and held that the trial court's decree was overly intrusive into daily prison administration.

Fulbright & Jaworski did not participate in the original trial on the merits. That trial, and the post-judgment hearings, were conducted by the Honorable William Wayne Justice in the United States District Court for the Southern District of Texas. Most of the unresolved issues were settled in early 1982.

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Question No. 18 (continued):

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5. SDJ, Inc. v. City of Houston, 636 F. Supp. 1359 (S.D. Tex. 1986), appeal pending.

In this case, owners of topless dancing bars challenged the constitutionality of a Houston ordinance regulating the location of sexually-oriented businesses. The District Court entered judgment for the City on all significant issues.

My role was first to advise the City Council and to assist personally in drafting an ordinance, as requested by City Council, that would not violate the First Amendment. Once the suit was instituted, I supervised the trial preparation and briefing effort. I did not participate in the trial nor appeared in court. The case was tried before the Honorable Gabrielle McDonald in the United States District Court for the Southern District of Texas.

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Question No. 18 (continued):

6. Dougherty v. Continental Oil Co., 579 F.2d 954 (5th Cir. 1978), vacated by stipulation, 591 F.2d 1206 (5th Cir. 1979).

This antitrust action was brought by commission agents of Continental Oil Company, claiming that their termination as commission agents, and the defendant's refusal to make them jobbers, unlawfully restrained trade. The Court of Appeals reversed a verdict for plaintiffs because the verdict was based upon erroneous instructions as to vertical restraints.

The case was tried by in-house attorneys for Continental Oil Company. Following the adverse jury verdict, Fulbright & Jaworski was retained to prosecute the appeal. I wrote a substantial portion of the appellate brief and participated actively in formulating strategy for the appeal. Following our successful appeal and the remand by the Court of Appeals, the case was settled.

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Question No. 18 (continued):

7. Houston Gulf Coast Building & Construction Trades Council v. City of Houston, 697 S.W.2d 850 (Tex. App. 1 Dist. 1985), appeal following remand, 710 S.W.2d 181 (Tex. App. 1 Dist. 1986, writ ref'd n.r.e.).

This action was brought by a local trades council to enjoin the Houston City Council from enacting a schedule of "prevailing wages" to be paid to construction workers on City-owned projects. The plaintiff alleged that the contemplated wage scale was not "prevailing" and thus violated article 5159a, Tex. Rev. Civ. Stat. Ann. The City contended, with ultimate success, that under the circumstances a court should not enjoin a legislative act and that article 5159a specifically provides that the action of City Council in determining the "prevailing wage" is "final" and not subject to judicial review.

I participated actively and personally in the trial and briefing of this case. Specifically, I handled the City's case (with the help of two assistants) at the hearing on the City's motion to dissolve the first temporary restraining order and at the evidentiary hearing on the first temporary injunction. I presented the City's oral argument and assisted in questioning witnesses. I was closely involved with the briefing and legal research, at the trial and appellate levels.

Plaintiffs were twice granted temporary injunctions. On appeal, the City reversed the trial court in each instance and was ultimately successful in that the Court of Appeals ordered the cause dismissed. The Texas Supreme Court refused plaintiff's application for writ of error.

There was no trial on the merits. The various evidentiary hearings were conducted in July 1985 and December 1985, after the suit was filed in July 1985. The presiding judge was the Honorable Jack O'Neill, 152nd Judicial District Court, Harris County, Texas. Opposing counsel was Joseph F. Archer, 801 Main St., Suite 510, Houston, TX 77002, telephone 713-659-4455.

Question No. 18 (continued):

8. Amoco Production Co. v. Department of Energy, 512 F. Supp. 815 (D. Del. 1981), aff'd, 671 F.2d 485 (Em. App. 1982).

This was a declaratory judgment action by several major oil companies, challenging the Department of Energy's interpretation of certain regulations regarding the price of natural gas liquids. The central issue was whether sales of natural gas liquids to corporate affiliates constituted a "first sale" that qualified for certain upward cost adjustments. The case raised issues of regulatory interpretation, contemporaneous construction of regulations, and adherence to regulatory procedures under the Administrative Procedures Act.

I was very actively involved with this case from shortly after its inception to its conclusion, working with a team of attorneys representing various oil companies. I was the second-ranking attorney representing Exxon Corporation (excluding in-house counsel) and Sun Oil Company and worked on the case from early 1979 through its conclusion in 1982. My involvement included brief and pleadings preparation; presenting part of the oral argument in district court; legal research; document review; extensive participation in discovery disputes; and assistance in coordinating strategy among multiple plaintiffs.

The case was heard on motion for summary judgment before the Honorable Walter Stapleton in the United States District Court for the District of Delaware. The court granted plaintiffs' motion for summary judgment, and the Temporary Emergency Court of Appeals affirmed.

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Question No. 18 (continued):

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Question No. 18 (continued):

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9. Adjusters Replace-A-Car, Inc. v. Agency Rent-A-Car, Inc., 735 F.2d 884 (5th Cir. 1984), cert. denied, 105 U.S. 910 (1985).

This antitrust action alleged that the defendant attempted to monopolize the so-called replacement rental car market in certain Texas cities. The case raised significant antitrust issues regarding predatory pricing and relevant product market.

Fulbright & Jaworski was retained in late 1983 to assist the defendant's trial counsel on appeal after the jury awarded the plaintiff a substantial recovery. I worked closely with trial counsel in evaluating the case and preparing a successful motion for judgment notwithstanding the verdict. I assisted in writing the appellate briefs. The Court of Appeals affirmed the judgment notwithstanding the verdict.

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Question No. 18 (continued):

10. City of Houston v. Cloice A. Duncan, No. 85-051235 in the 269th Judicial District Court, Harris County, Texas.

The City filed this lawsuit to enjoin the use of a residence for commercial purposes in violation of residential deed restrictions. This particular case, standing alone, is not particularly significant. It is, however, representative of a deed restriction enforcement program upon which I have placed special emphasis as City Attorney. As a city with no residential zoning, Houston relies primarily upon the enforcement of private deed restrictions (except, of course, for racial covenants, which are never enforced) to protect neighborhoods from commercial activity.

One of my foremost projects as City Attorney has been to reorganize and revitalize the City's legal efforts in filing and winning cases against those who undertake commercial activity in violation of deed restrictions. In the Duncan case, I appeared personally in the trial court and presented a lengthy oral argument explaining the Legal Department's commitment to the City's enforcement program and the importance of that program to the City as a whole.

The trial of this case occurred June 2-5, 1986, before the Honorable David West, 269th Judicial District Court, Harris County, Texas. The court entered an injunction against the defendant and awarded the City substantial attorneys' fees. There was no appeal. Opposing counsel was Nell Holloway, 3302 Sackett, Houston, TX 77098, telephone 713-526-1717.

Question No. 19: Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While I was an attorney at Fulbright & Jaworski, the more significant legal matters on which I worked were all litigated cases, some of which are described in my an-

Question No. 19 (continued):

swer to Question No. 18, above. As City Attorney, I have been involved in a number of significant projects other than lawsuits. In these instances, of course, much of the work has been performed by assistants under, in varying degrees, my supervision. These matters include the following:

1. After I became City Attorney, the Houston City Council passed a comprehensive minority-owned and women-owned business enterprise ("M/WBE") ordinance, which establishes goals and a certification and enforcement mechanism for participation by minority-owned and women-owned businesses in all categories of City contracts. Under my supervision, the Legal Department completed work on the ordinance, and I oversaw its legal presentation to, and passage by, the City Council. The ordinance was carefully drafted so as to pass muster under the Texas competitive bidding statute. It has not been subject to legal challenge and has resulted in substantially higher M/WBE participation in City contracts.

2. I was in charge of the City's legislative program in the 1985 session of the Texas Legislature. I personally negotiated a major compromise with police and fire employee groups and labor unions regarding state civil service legislation. I helped to coordinate the drafting of the compromise bills and assisted in gaining their approval (with amendments) by the Houston City Council and the Texas Legislature.

3. In 1984, I supervised the creation and implementation of a project for the collection of delinquent City property taxes. This computerized program, utilizing approximately thirty employees, has collected more than $80 million in delinquent taxes in the past three years.

4. In 1985, I established a separate unit of assistant city attorneys specializing in deed restriction enforcement. This project has resulted in increased and more effective enforcement efforts by the City than ever before.

5. As City Attorney, I supervised and coordinated the development of an ordinance regulating sexually-oriented businesses that sell alcoholic beverages. The effort included, with the help of my assistants, City Council hearings to

Question No. 19 (continued):

develop appropriate legislative findings, and successful defense of the ordinance in federal court.

6. A similar effort was undertaken to regulate adult arcades. An ordinance was written and successfully presented to City Council, and systematic prosecution of violations has been undertaken in Municipal Court.

7. In 1985, the City of Houston Legal Department completed a four-year project to revise completely the City of Houston Code of Ordinances. The revised Code was adopted by City Council in that same year.

8. In 1984-85, a petition drive forced a referendum on a controversial City of Houston ordinance prohibiting discrimination in City employment on the basis of sexual orientation. I personally supervised the legal aspects of the petition process to ensure that the petitions were properly reviewed under the City Charter and that the referendum was conducted in accordance with the Charter and the Texas Election Code.

9. In 1986, I personally participated in the negotiation and drafting of a City of Houston ordinance prohibiting the City from contracting with companies engaged in certain business activities in the Republic of South Africa. Under my general supervision, the Legal Department is assisting in the successful enforcement of that ordinance.

10. As City Attorney, I have undertaken a program to promote strict adherence, by City employees, to state laws and City ordinances that prohibit, in most instances, gifts to City employees by persons doing business with the City. The program has taken the form of advising City department heads, by detailed memoranda, of the applicable legal proscriptions. The result has been a noticeable decrease in gift-giving to City employees and an increased awareness of the constraints of state law. I also assisted in a 1987 revision of the City's ethics ordinance.

11. In the 1985 session of the Texas Legislature, I participated in the negotiation and drafting of compromise legislation regarding statewide billboard regulation. After

Question No. 19 (continued):

the bill had been passed by the Legislature, I oversaw the preparation of a regulatory ordinance and its adoption by the Houston City Council. To date, the City Legal Department has successfully defended that ordinance against a major legal challenge brought by the billboard industry.

12. In 1984-85, I personally took charge of an effort to institute detailed cost-based analyses by the City in reviewing applications for taxicab rate increases. I personally presented to City Council a recommendation which, when adopted, established a precedent that taxi rate increases, like rate increases for electric and other utilities, should protect the consumers' interests by being based upon the actual cost of providing the service rather than upon other factors.

II. FINANCIAL DATA AND CONFLICT OF INTEREST

Question No. 1: Describe all financial arrangements, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.

None.

Question No. 2: Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I intend to withdraw from all outside activities where conflicts are reasonably foreseeable. I intend to monitor my assets and financial activities closely to avoid conflicts. Client conflicts will be few, since my only client during the past three years has been the City of Houston. I plan to adhere strictly to the canons of ethics and to resolve actual conflicts by recusal.

Question No. 3: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

Question No. 4: Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Harris County Co-Chairman, Reagan-Bush Campaign, 1980. I was one of three co-chairmen who coordinated the local Reagan-Bush campaign for the 1980 general election, including operating the headquarters, organizing events, and recruiting volunteers.

Question No. 5: If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?

Not applicable.

Question No. 6: Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

A completed financial net worth statement is attached, with schedules where appropriate.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

(as of 4-30-87)

ASSETS		LIABILITIES	
Cash on hand and in banks	15,435	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	5,900
Listed securities—add schedule	15,283	Notes payable to relatives	
Unlisted securities—add schedule	15,750	Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	4,623
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	58,922
Real estate owned—add schedule	17,358	Chattel mortgages and other liens payable	6,591
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property	52,000		
Cash value—life insurance			
Other assets—itemize:			
see schedule	38,600		
		Total liabilities	76,036
Total assets	254,426	Net worth	178,390
		Total liabilities and net worth	254,426

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor			
On leases or contracts		Are any assets pledged? (Add schedule.)	No
Legal Claims		Are you defendant in any suits or legal actions?	No
Provision for Federal Income Tax		Have you ever taken bankruptcy?	No
Other special debt			

SCHEDULES TO FINANCIAL STATEMENT

Listed Securities	
Templeton Growth Fund Inc.	$ 2,250
Merrill Lynch Retirement Reserves Money Fund	8,576
Shearson Aggressive Growth Fund Inc.	2,201
Medical Care International	607
Hendon Exploration Inc.	180
Mesa Limited Partnership	27
American Capital Reserve Fund	1,442
Unlisted Securities	
National Bank of Waller County	5,750
M. T. Halbouty Inc.	-0-
Professional Audio Video Corporation	10,000
Real Estate	
Homestead	103,900
Calvin C. Mann Trustee Partnership	13,458
Other Assets	
Leasing Services Company	1,000
Precious metals	10,598
National Investors Life -- I.R.A.	5,200
Fidelity Security Life -- I.R.A.	735
Paycheck receivable	2,357
Accrued termination pay	18,710
Real Estate Mortgages Payable	
United Capital Mortgage Corporation	31,969
C. Leland Fontenot	21,453
Universal Savings & Loan Association	5,500

III. GENERAL

Question No. 1: Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The separation of powers doctrine requires that each branch of government exercise powers only within its proper sphere. Federal courts should be especially sensitive to maintaining the proper balance among the three branches, as it is the judiciary that, through its decisions, determines whether any branch has overstepped its appropriate bounds.

By virtue of the case-or-controversy requirement

Question No. 1 (continued):

in the Constitution, courts should be engaged primarily in the resolution of concrete disputes between parties and should adjudicate in a given case only to the extent necessary to resolve a particular grievance. While class actions may be appropriate where the usual requirements for class certification are met, courts normally should limit their orders to the parties that are before them.

Federal courts are courts of limited jurisdiction. For the proper functioning of a federal system, that limitation must be kept constantly in mind. Observance of the limitation includes adherence to constitutional and statutory jurisdictional provisions as well as to standing and ripeness constraints that ensure that adjudication is addressed primarily to actual parties that have real disputes to be resolved.

Where the dispute-resolution function is properly observed, courts very properly will tend to abstain from policy-making, which is the role of the executive and legislative branches of government. Federal courts can, and should, be aggressive in their protection of constitutional rights and in recognizing constitutional and statutory limitations upon the roles of the other branches. However, the enforcement of constitutional rights should not necessarily entail the imposition of broad, affirmative duties upon the public and private sectors except where the constitutional mandate for such duties is clear. Otherwise, affirmative duties should be imposed by the policymakers, not the adjudicators.

Finally, the adjudicatory role of the courts is usually inconsistent with the role of administrator of parties that are before the court. Of course, there are times when a court must retain jurisdiction over a controversy in order to assure enforcement of its orders. The normal assumption, however, should be that orders and judgments will be obeyed, and post-judgment proceedings usually should be in the context of real adversarial disputes over whether compliance has been achieved, rather than by overall institutional administration by judges.

In summary, the federal judiciary should not be timid in protecting constitutional rights, interpreting and applying the law, and promoting justice. However, to the

Question No. 1 (continued):

same extent that federal courts should vigorously enunciate the limitations which the Constitution imposes upon the executive and legislative branches, those same courts must also refrain from exceeding their own constitutionally-mandated role.

Question No. 2: What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.

My record as Chairman of the Civil Service Commission of the City of Houston evidences my concern for equal justice under the law. As Chairman, I presided over hundreds of cases in which City employees, often appearing without an attorney or other assistance, were afforded full due process of law. More than under previous chairmen, the Commission during my tenure allowed employees a full public hearing and devoted more time than ever before to permitting employees to confront their accusers in an attempt to vindicate themselves.

A review of my record as Commission Chairman will indicate that the Commission evidenced strong concern for employee rights and overturned disciplinary actions where appropriate. Employee groups, including labor unions, uniformly praised the Commission's work. Under my Chairmanship, the Commission took strong public stands against abuses such as police brutality, sexual harassment, and discrimination. I believe that my Chairmanship of the Civil Service Commission constitutes a fair and adequate test of my concern for fairness and equal justice under the law and concern for due process and for the rights of all persons.

I have not been formally involved in providing direct pro bono representation to the disadvantaged. However, my Civil Service Commission work was provided without pay. It constitutes a form of legal service that, in my case, involved hundreds of hours of time. Additionally, I have served without pay as a Commissioner of the Harris County Housing Authority, which oversees Community Development and Section 8 housing services to the disadvantaged.

SUPPLEMENT TO
QUESTIONNAIRE FOR JUDICIAL NOMINEES
Jerry E. Smith

I. 11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

There have been no lapses of membership.

I. 12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

No change from previous response.

II. 1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Upon termination from the City of Houston, I will receive, in a one-time lump sum, the value of my unused vacation and sick time. This will be in the amount of approximately $22,000 and will be paid within a few weeks of my termination. I have no other vested retirement or other benefits.

II. 2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

The only likely potential conflicts of interest during my initial service as a judge will be cases in which the City of Houston is a party. For example, there will be a conflict as to cases that were pending during my tenure as City Attorney.

II. 4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

Attached hereto is a copy of the Executive Personnel Financial Disclosure Report, Form SF 278, which I filed immediately following my nomination.

III.1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have described my service on the Harris County Housing Authority Board of Directors and the City of Houston Civil Service Commission. On the Harris County Housing Authority, I served for approximately 2 1/2 years, spending one afternoon per month on Housing Authority business. I served on the Civil Service Commission for approximately two years and spent approximately 25 hours per month on Commission matters.

III.2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I do not belong to any organization that discriminates on the basis of race, sex, or religion. As an undergraduate, I attended Yale University, which unfortunately at that time did not admit women. As a consequence, campus organizations, including those to which I belonged such as the Yale Marching Band and Mory's Association (a private club), were male-only institutions. With the advent of coeducation, such organizations began changing their membership policies and now admit women. From 1978 through approximately 1982, I was a member of the Exchange Club of Houston, a service club, which to my knowledge had no women members at that time but has since included women in its membership. I have never been a member of any organization that dis-

III.2. (continued)
criminates on the basis of race or religion. I pledge, as a judge, to avoid membership in any organization that practices invidious discrimination.

III.3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission, in my jurisdiction, to recommend candidates for nomination to the Court of Appeals. After expressing an interest in being considered for a federal judgeship, I was requested to visit the Justice Department. I participated in a one-day series of interviews with several persons, and was told that I would be under consideration for any vacancies. A few months later, I was told by the Justice Department that I had been tentatively selected for a Fifth Circuit vacancy, subject to the requisite clearances and investigations. After those matters had been completed, I was nominated.

III.4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No.

CHAIRMAN
and Member-at-Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Harwood, V.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Carey W. Ichter
One Shell Square
Ninth Floor
New Orleans, LA 70139

SIXTH CIRCUIT
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52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
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One IBM Plaza
Suite 4300
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
P.O. Box 85268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andersen
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Hochman, Jr.
Wilmer Bldg.
2 Dexter Avenue
P.O. Box 76
Montgomery, AL 36104

DISTRICT OF COLUMBIA
CIRCUIT & FEDERAL
CIRCUIT
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AMERICAN BAR ASSOCIATION
Standing Committee on
Federal Judiciary
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

June 3, 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: JERRY E. SMITH
United States Court of Appeals
for the Fifth Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Jerry E. Smith for appointment as Judge of the United States Court of Appeals for the Fifth Circuit.

A substantial majority of our Committee is of the opinion that Mr. Smith is "Qualified" for this appointment. The minority found him to be "Not Qualified".

Sincerely,

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

June, 1987

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

   Anthony Joseph Scirica

2. Address: List current place of residence and office address(es).

   640 Harts Ridge Road, Conshohocken, Pennsylvania 19428

   5614 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106

3. Date and place of birth.

   December 16, 1940 - Norristown, Pennsylvania

4. Marital status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

   Married, May 6, 1966 to Susan Morgan Scirica
   Reading teacher:
   Meadowbrook School, Meadowbrook, Pennsylvania; and
   Germantown Friends School, Coulter Lane, Philadelphia, Pa.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   Wesleyan University, B.A. with honors, 1962

   University of Michigan Law School, J.D., 1965

   Fulbright Scholar, Civil and International Law
   Central University, Caracas, Venezuela, 1965-1966

   National Judicial College, General Jurisdiction,
   July, 1980

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor or employee since graduation from college.

Law firm: Scirica and McGrory
Norristown, Pennsylvania, 1966-1969; Associate

Law firm: McGrory, Scirica, Wentz and Fernandez
Norristown, Pensylvania, 1970-1979, Partner

Swede Square, Inc., P.O. Box 68, Norristown, Pennsylvania
Director and President, 1970-1979 (a shopping center)

Pennsylvania House of Representatives, Member, 1971-1979

Temple University, Trustee, 1980 - present

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees and honorary society memberships that you believe would be of interest to the Committee.

B.A. with honors; Fulbright Scholarship

I have received numerous awards from civic and fraternal organizations, and was honored by the Pennsylvania District Attorneys' Association.

In 1981, I received the Law Day Award for "dedicated leadership to the law" from the Montgomery Bar Association. In 1982, I received the Montgomery Bar Association Public Service Award "in recognition of outstanding efforts in the public interest."

The following are editorial comments that appeared in the Philadelphia Inquirer and the Bulletin.

An intelligent advocate and strategist of reform, (Scirica) proved to be one of the most effective Republicans in the house and, despite being in the minority party, one of the most forceful voices for honest government in the legislature.

The Philadelphia Inquirer
Editorial: October 1, 1978

An excellent judge and a model of judicial temperament.

The Bulletin
Editorial: November 29, 1981

I enclose copies of three editorials that appeared in the Philadelphia Inquirer, February 4, 1980, October 15, 1982 and September 20, 1984; and a news article in the Bulletin, January 14, 1980.

9. Bar Associations: List all bar associations, legal or judicial related committees or conference of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

I am a member of the Montgomery, Pennsylvania, and American Bar Associations. I am a past director of the Montgomery Bar Association and have served as chairman of various committees. I am also a member of the Justinian Society.

From 1980 to 1984, I was a member of the Pennsylvania Conference of State Trial Judges. I served as chair of the legislative committee and also as a member of the education committee. In addition, I was designated by the conference as liasion with the Sentencing Commission.

I was chair of the Pennsylvania Commission on Sentencing which promulgates sentencing guidelines for trial judges. I was appointed by Chief Justice Michael Eagen and was reappointed by Chief Justice Samuel Roberts. I resigned in 1985.

I was appointed by Governor Richard Thornburgh as chair of a panel to investigate a hostage taking incident at Graterford State Correctional Institution. The panel issued a report which is submitted.

From 1977 to 1985, I was a member of the Pennsylvania Supreme Court Criminal Procedural Rules Committee. I was appointed by Chief Justice Benjamin Jones and reappointed by Chief Justices Eagen and Roberts.

When I was a member of the legislature, I served on the liaison committee of the Supreme Court and General Assembly. Composed of legislators and justices, the committee met periodically to facilitate understanding of our respective powers and responsibilities.

From 1981 to 1984, I was designated by the Pennsylvania Conference of State Trial Judges and the Pennsylvania College of the Judiciary to give the lecture on criminal sentencing to all the trial judges. I also presented the lecture on sentencing to the Pennsylvania Superior Court.

I participated as vice-chairman of the Committee to Study Pennsylvania's Unified Judicial System. Chaired by retired Justice Pomeroy, the committee made recommendations to the Supreme Court and the General Assembly.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None

Please list any other organizations to which you belong (such as civic, educational, "public interest" law, etc.) which you feel should be considered in connection with your nomination.

Temple University, Trustee.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

Pennsylvania Supreme Court, April 26, 1966

Montgomery County Court of Common Pleas, April 26, 1966

U.S. District Court, 1967

12. Published Writings: List the titles, publishers and dates of books, articles, reports or other published material you have written. You may also list any significant speeches which you feel may be of interest to this Committee.

Pennsylvania College of the Judiciary
Lecturer - Criminal Sentencing, February 1981;
March, 1983; December, 1983; (prepared by myself)
(outline submitted)

Sentencing Guidelines
Promulgated by the Pennsylvania Commission on Sentencing
Anthony J. Scirica, Chairman
(copy submitted)

Graterford Panel
Anthony J. Scirica, Chairman
(report submitted)

Acts of Assembly

Act No. 1980-26 - The Divorce Code
Was originally drafted by the Pennsylvania Bar Association, although I made substantial and comprehensive changes to it.

The following were drafted by myself and two other persons:

Act No. 1978-271 - The Grand Jury Act

Act No. 1978-164 - The Electronic Surveillance Control Act

Act No. 1978-168 - The Witness Immunity Act

Act No. 1978-169 - The Pennsylvania Crime Commission Act

Act No. 1978-319 - Providing for appellate review of criminal sentences and establishing a sentencing commission to issue guidelines, I drafted myself.

(copies of Acts submitted)

I have given many lectures, speeches and addresses on organized crime and political corruption, criminal law, criminal sentencing, juvenile law, domestic relations law, the judicial code, corrections, medical malpractice, guardianship, criminal history information and the Fourth Amendment before groups such as the Pennsylvania Bar Association, various county Bar Associations, National Institute of Justice, Pennsylvania College of the Judiciary, Pennsylvania Conference of State Trial Judges, Pennsylvania Superior Court, Villanova Law School, Temple School of Law, Citizens Crime Commission of Philadelphia, District Attorney's Association, the Pennsylvania Prison Society, schools, colleges and many community and civic organizations.

13. Health: What is the present state of your health? List the date of your last physical examination,

Excellent. May, 1987

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Judge, United States District Court, Eastern District of Pennsylvania, October 19, 1984. As a federal judge I have presided over all types of cases within our jurisdiction.

Judge, Court of Common Pleas, Montgomery County. Elected to ten-year term commencing January, 1980. Resigned October 18, 1984.

As a state court judge, I presided over every type of case, criminal and civil, jury and bench trials, injunctions, appeals from legislative bodies and administrative agencies, civil and criminal motions, domestic relations and juvenile.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

In Re: Bonnie McCormick, 108 Montg. Co. L.R. 85 (1981), aff'd, 299 Pa. Super. 578, 445 A.2d 218 (1982).

Valley Center, Inc. for Mental Health v. Parkhouse, et al., 108 Montg. Co. L.R. 368 (1981), aff'd, 62 Pa. Commw. 453, 437 A.2d 74 (1981).

NorthPenn Water Authority v. Worcester Township, 109 Montg. Co. L.R. 51 (1981), aff'd, 71 Pa. Commw. 575, 454 A.2d 699 (1983).

Dorothy M. Messa v. Matthew H. Messa, 110 Montg. Co. L.R. 192 (1981). Appeal withdrawn.

United States v. Shearson Lehman Brothers, Inc., et al., 650 F. Supp. 490 (E.D. Pa. 1986).

Lewis duPont Smith v. Lawrence E. Wood, et al., 649 F. Supp. 901 (E.D. Pa. 1986). No appeal filed.

Frank E. Lawrence v. United States of America Interstate Commerce Commission, et al., 629 F. Supp. 819 (E.D. Pa. 1985). No appeal filed.

A.J. Canfield Company v. Concord Beverage Company, 629 F. Supp. 200 (E.D. Pa. 1985), aff'd, 808 F.2d 291 (3d Cir. 1986).

Paul Heller, et al. v. United States, et al., 605 F. Supp. 144 (1985), aff'd, 776 F.2d 92 (3d Cir. 1985).

United States of America v. National Wood Preservers, Inc., et al., C.A. No. 84-0458 (E.D. Pa., Nov. 7, 1986).

(Copies of opinions submitted)

As a judge of the Court of Common Pleas, I wrote more than a hundred opinions. To the best of my knowledge, I was affirmed in every case except two:

In Commonwealth of Pennsylvania v. Tribble, 502 Pa. 619, 467 A.2d 1130 (1983), defendant was convicted in the Court of Common Pleas, Montgomery County, Criminal Division, No. 2238-80, of theft of movable property, and he appealed. The Superior Court, No. 1799 Philadelphia Term, 1981, affirmed, 302 Pa. Super. 595, 448 A.2d 1174. On defendant's petition for allowance of appeal, the Supreme Court, No. 79 E.D. Appeal Docket, 1982, Larsen, J., held that even though it was a reasonable inference from testimony of Commonwealth's fingerprint expert that defendant's fingerprints were impressed on county trucks on date of break-in, such testimony was at least equally consistent with defendant's innocence and, therefore, insufficient to sustain conviction. The court concluded that an equally reasonable inference was that defendant's fingerprints were impressed prior to time of break-in due to fact that defendant was in frequent physical contact with trucks when he worked for county only two months prior to break-in and when he returned to jobsite only days prior to break-in to inquire about possibility of being rehired. But see id. (McDermott, J., dissenting)

In Commonwealth of Pa. Dept. of Trans. Bureau of Traffic Safety v. Gordon, ___ Pa. Commw. ___, 505 A.2d 1125 (1986), the Department of Transportation suspended defendant's driver's license for one year for refusal to submit to blood-alcohol test, and defendant appealed. The Common Pleas Court, Montgomery County, Anthony J. Scirica, J., reversed, and Department appealed. The Commonwealth Court, No. 3628 C.D. 1983, Palladino, J., held that: (1) trial court's finding that defendant's refusal was not knowing and conscious was not supported by competent evidence, absent medical evidence to such effect, and (2) officer was correct in accepting defendant's refusals as final and was under no obligation to make use of blood sample subsequently drawn by hospital employees for medical purposes.

As a judge on the United States District Court since October, 1984, I have been affirmed in every opinion except one. In the case where I was not affirmed, the Third Circuit Court of Appeals changed the law after my decision, and remanded the case for reconsideration under the new standard. See Swiggett v. Rapone, 787 F.2d 1584 (3d Cir. 1984). The Supreme Court however, recently reversed the Third Circuit, thereby affirming the basis for my ruling in Swiggett. See O'Lone v. Estate of Shabazz, 55 U.S.L.W. 4792 (U.S. June 9, 1987).

In Swiggett, a prisoner housed in the maximum security block challenged prison regulations preventing his participation in religious services with fellow Muslims in the general population. Swiggett contended that the regulations infringed upon his First Amendment right to freely exercise his religion.

Based on St. Claire v. Cuyler, 634 F.2d 109 (3d Cir. 1980), I granted defendant's motion for summary judgment on February 6, 1985. On January 27, 1986, the Third Circuit overruled St. Claire and adopted a different standard, requiring the court to balance security needs with First Amendment rights. Shabazz v. O'Lone, 782 F.2d 416 (3d Cir. 1986), rev'd sub nom. O'Lone v. Shabazz, 55 U.S.L.W. 4792 (U.S. June 9, 1987).

Based on Shabazz, the Third Circuit vacated and remanded Swiggett on February 27, 1986. In June, 1987, however, the Supreme Court held in O'Lone that the Third Circuit's Shabazz standard did not reflect sufficient respect for the judgment of prison administrators. O'Lone, 55 U.S.L.W. at 4794.

After remand, the case settled for the sum of $250.

There have been no cases where I was affirmed but criticized.

16. State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed.

Assistant District Attorney, Montgomery County, June 1967 to June 1969

Member, House of Representatives, General Assembly 1971-1979

Chairman, Judiciary Subcommittee on Crime and Correction

Minority Chairman, Judiciary Committee investigation into organized crime and official corruption. Co-sponsor of anticrime laws that strengthened law enforcement in fighting crime and corruption.

Chief sponsor, Divorce Reform Act, Amendments to Sentencing Code, Amendments to Juvenile Code, Five-Sixths Civil Jury Verdict Act, Self-Proved Will Act, Comparative Negligence bill.

Co-sponsor, Judicial Code, Grand Jury Act, Amendments to Juvenile Code, Immunity Act, Pennsylvania Crime Commission Act, Electronic Surveillance Control Act.

Member, House-Senate Permanent Task Force on Decedents' Estates. The Task Force drafts all probate, estate and fiduciary legislation.

Member, House Judiciary Committee

Member, House Conservation Committee

Member, House State Government Committee

Member, Pennsylvania Supreme Court Liasion Committee between the Supreme Court and the General Assembly.

Chairman, Pennsylvania Commission on Sentencing. The Commission issues guidelines to trial judges on sentencing criminals. Appointed by the Chief Justice of Pennsylvania.

State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. (a) Describe chronologically your law practice and experience after your graduation from law school including:

1. Whether you served as a clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

No.

2. Whether you practiced alone, and if so, the addresses and the dates;

No.

3. The dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Law Firm: Scirica and McGrory, Norristown, Pennsylvania 1966-1970; Associate

Assistant District Attorney, Montgomery County, Pennsylvania. 1967-1969

Law Firm: McGrory, Scirica, Wentz and Fernandez, Norristown, Pennsylvania 1970-1979; Partner

(b) 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I was engaged in the general practice of law from 1966 to 1979. At the time I served in the District Attorney's Office, there were terms of court which permitted a private practice of civil law.

My law firm was engaged in corporate, tax, real estate and zoning, decedents' estates and general civil matters. We did some domestic relations and even less criminal defense work.

Except for the period I spent as an Assistant District Attorney, when I tried approximately fifty jury trials for felonies and misdemeanors, most of my practice was civil law. After leaving the prosecutor's office, I tried some criminal defense cases, but did little criminal work afterwards. I was involved as co-defense counsel in a criminal anti-trust suit brought by the Department of Justice. I continued however to maintain a scholarly interest in criminal law.

From 1977 to 1985, I served on the Pennsylvania Supreme Court Criminal Rules Committee. All of my work in the legislature centered on improvements to the law, civil and criminal. In particular, I gave much attention to criminal sentencing. In addition, I gave many lectures and addresses on civil and criminal law topics to Bar Associations and law schools.
After 1970, I tried a number of civil cases, primarily personal injury, commercial and contractual litigation. My practice centered on corporate and labor matters, although I did some domestic relations and decedents' estates work.

In the legislature, I worked on many areas in the civil law, such as medical malpractice. In particular, I worked for adoption of the Judicial Code with Representatives Norman Berson and William Hutchinson (now Justice Hutchinson) in conjunction with the code's drafters, William Zeiter and Judge Robert Doyle. I was chief sponsor of the Comparative Negligence bill, the Five-Sixths Civil Jury Verdict Act, the Self-Proved Will Act and the Divorce Reform Act.

2. Describe your typical former clients, and mention the area, if any, in which you specialized.

Typical former clients included: Jay Gress, Inc. (the largest fuel oil dealer in central Montgomery County), Genuardi's Supermarkets (a chain of 16 supermarkets), Swede Square, Inc. (a shopping center), Borzillo Bakery, Inc., Suburban Bank, Provident Indemnity Life Insurance Company, Norristown Wholesale, Inc., Conte Luna Foods, Inc. I handled general corporate matters including litigation, arbitration and labor negotiations.

(c) 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Between 1966 and 1970, I appeared in court regularly, sometimes constantly. Between 1970 and 1975, I appeared in court occasionally. In the later years, as my legislative schedule became heavier, I concentrated on corporate work not involving litigation, although I handled pretrial issues and argued appellate matters.

2. What percentage of these appearances was in:

(a) Federal courts - 15%
(b) State courts of record - 80%
(c) Other courts - 5%

3. What percentage of your litigation was:

(a) Civil - 75%
(b) Criminal - 25%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel or associate counsel.

Approximately one hundred. Almost all were as sole counsel.

5. What percentage of these trials was:

(a) Jury - 40%
(b) Non-jury - 60%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

As an Assistant District Attorney, I tried approximately fifty cases in Montgomery County. I cannot remember the names of any of the defendants and the records are no longer available. Among the cases tried were rapes, armed robberies, arsons, burglaries, thefts and involuntary manslaughter. I tried before every judge, who at that time were Judge David Groshens, Judge Robert Honeyman, Judge William Ditter and Judge William Vogel. Some of the defense lawyers that I remember were Edward Kane, 215-275-2000; Harry Green, 215-855-4500; Richard Gerber, 215-279-6700; Richard Lovenwirth, 215-326-8575; Hon. Vincent A. Cirillo, 215-278-3481; James Geoghegan, 215-828-2690; David Fitzgerald, 215-277-1313, Daniel Quinlan, 215-688-0434; and Anthony Giangiulio.
In 1984, I returned to my old law firm to search the records but found that the older case files had been disposed of.

One of the more significant cases was United States v. Jay Gress, Inc., a criminal antitrust action brought by the federal government under the Sherman Antitrust Act for price fixing on the part of most of the fuel oil dealers in central Montgomery County. I was co-counsel for Edward Hein and Jay Gress, Inc. and the case eventually terminated with a consent decree before Judge Charles Weiner of the U.S. District Court of Eastern Pennsylvania. Pursuant to the consent decree, Hein was fined $10,000 and placed on probation. Some of the other defense counsel were Edwin Rome, 215-569-5633, Henry Reath, 215-854-6347, and Jules Pearlstine, 215-855-2155.

Another case tried before Judge William Vogel in Montgomery County involved a personal injury action and verdict against my client, Genuardi Supermarkets, Inc.

Plaintiff's counsel was Arthur Jenkins, 215-275-8222 and other defense counsel was John Warner, 215-279-5633.

Among the litigation I was handling when I left my law firm for the Common Pleas bench were two suits filed in the Eastern District of Pennsylvania against our client, Borzillo Bakery, Inc. The first was Bakery and Confectionary Workers, Local 6 v. Borzillo Bakery, Civil Action No. 79-3958 (E.D. Pa.), a suit brought under the Labor Management Relations Act of 1947 and ERISA for failure to make certain contributions to various employee benefit plans pursuant to a collective bargaining agreement. After participating in a pretrial conference before Judge Joseph McGlynn, I left the firm. The opposing counsel was Leonard Spear, 215-546-4183, and I was advised the suit was settled in 1982.

The second matter was Philadelphia Bakery Employee and Food Driver Salesman v. Borzillo Bakery, Civil Action No. 79-2539 (E.D. Pa.), a suit brought under the Labor Management Relations Act and ERISA for failure to make payments to the health and welfare plan. The case was assigned to Judge Bechtle, but I left the firm before it was settled. Steven H. Spencer was plaintiff's counsel.

I was counsel for the defendant in a suit filed in federal court alleging sexual discrimination on the part of my client, the employer. Equal Employment Opportunity Commission v. Inventory Control Systems, Inc., Civil Action No. 75-57 (E.D. Pa.). After a pretrial conference before Judge E. Mac Troutman, the case was settled by a consent decree without admission of fault. The opposing counsel was Rosemarie Rhodes, EEOC, 127 N. 4th Street, Philadelphia, Pennsylvania, 215-596-6065.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a lawyer I participated in many cases that did not go to trial but were significant to my clients. These matters involved giving advice and counsel to clients and negotiating with opposing lawyers.

As a judge I have participated in many settlement discussions resulting in resolution of the cases.

As a Common Pleas judge, I served as chair of the Pennsylvania Commission on Sentencing and chair of the governor's Panel to Investigate the Recent Hostage Incident at Graterford State Correctional Institution.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Describe all financial arrangements, stock options, deferred compensation agreements, future benefits and other continuing relationships with business associates, clients or customers.

   None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

   Should a potential conflict of interest arise, I would recuse myself from the case.

3. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No.

4. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   Except for my own campaigns for the General Assembly and for Judge of the Court of Common Pleas, I have played no major role in political campaigns. I did volunteer work for the gubernatorial campaign of Governor Raymond P. Shafer in 1966, the senatorial campaign of Senator Richard S. Schweiker in 1968 and the gubernatorial campaign of Drew Lewis in 1974.

5. If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?

   None. I severed all ties including financial ties, when I became a judge.

6. Please complete the attached financial net worth statement in detail. (Add schedules as called for).

   Statement and schedule submitted.

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	4,000	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	19,700
Listed securities—add schedule		Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	2,000
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	90,000
Real estate owned—add schedule	475,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable	97,000	Other debts—itemize:	
Autos and other personal property	110,000	AUTOMOBILES	16,000
Cash value—life insurance	11,000		
Other assets—itemize:			
		Total liabilities	127,700
Total assets	647,000	Net worth	519,300
		Total liabilities and net worth	647,000
CONTINGENT LIABILITIES	NONE	GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule.)	NO
On leases or contracts		Are you defendant in any suits or legal actions?	NO
Legal Claims		Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax			
Other special debt			

ALL ASSETS ARE jointly owned by husband and wife

6

[illegible]

SCHEDULE

ASSETS (All assets are jointly owned by husband and wife)

A. Real Estate owned:

1. Residence:	640 Harts Ridge Road Conshohocken, Pennsylvania	$350,000
2. Atelier Condominium Sun Valley, Idaho (no mortgage)		125,000

B. Note/Mortgage owned:

1. Note and Mortgage resulting from sale of stock		47,000

C. Pension

1. Commonwealth of Pennsylvania	(annually)	20,690

LIABILITIES

A. Mortgage on residence,
640 Harts Ridge Road

Meridian Mortgage Corporation, 11%
55 East Lancaster Avenue
St. Davids, Pennsylvania 19087
25 years, dated November, 1979 — 90,000

B. Notes (two notes unsecured)

Meridian Bank
Norristown, Pennsylvania — 13,700
6,000

C. Notes (secured)

GMAC (two automobiles) — 8,500
7,500

III. GENERAL (PUBLIC)

1. Please discuss your views in the following criticism involving "judicial activism."

> As a former participant in the electoral and legislative process, I believe that the appropriate forums for deciding matters of public policy are the duly elected representative assemblies of the people.
>
> Where the intent of Congress or the legislature is clear, courts should follow that legislative intent, except where any law contravenes the Constitution.
>
> As a trial judge in both state and federal court for seven and one-half years, trying many kinds of cases, I believe the judiciary should adjudicate and settle disputes, should act with restraint and should be aware of the forms and limits of adjudication.

2. What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.

> As a young lawyer, I chose a career of public service, serving in the Pennsylvania House of Representatives for nine years.
>
> As part of my legislative duties, I devoted considerable time to issues involving young persons, especially mental health and retardation and juvenile deliquency and dependency.
>
> In addition, I served on many committees such as the Pennsylvania Commission on Sentencing (Chair) and the Governor's Task Force on the Graterford State Correctional Institution hostage crisis (Chair). Presently, I am a Trustee of Temple University.
>
> As a judge, I have always tried to conduct my courtroom fairly and impartially, and to accord every litigant and lawyer respect and equal justice under the law.
>
> In my personal life, I have always tried to act fairly and without bias. I have never joined a club or organization that discriminates by reason of sex, race, color, national origin or religion.

July, 1987

I. BIOGRAPHICAL INFORMATION (PUBLIC)

11. Court Admission:

There have been no lapses in membership.

12. Published Writings:

Copies already submitted.

II. FINANCIAL DATA AND CONFLICTS OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

Already submitted.

2. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

None.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

Copy of the Executive Personnel Financial Disclosure Report is enclosed.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   Please see my response to Section III, question 2 of the old questionnaire.

   In addition, I volunteered pro bono services to Montgomery County Legal Aid from approximately 1967 to 1973. Each lawyer participating in the program rendered service twice a year which consisted of seeing clients in the Legal Aid Office. The lawyer gave advice and if necessary, stayed with the case until its conclusion. I have contacted the present director of the Montgomery County Legal Aid Office, Mr. Harvey Strauss (telephone 215-275-5400) who informed me that records of service do not exist.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or, the practical implementation of membership policies? If so, list, with dates of membership. What have you dne to try to change these policies?

   I have never joined an organization that discriminates on the basis of race, sex or religion.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interview in which you participated).

There was no selection commission. I was contacted by the Department of Justice and invited to Washington. I was interviewed by Assistant Attorney General Stephen Markman and others in the Department of Justice. I was also interviewed by the Federal Bureau of Investigation and the representative of the American Bar Association for the Third Circuit.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No.

AMERICAN BAR ASSOCIATION

Standing Committee on Federal Judiciary
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

CHAIRMAN
and Member-at-Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Hayward, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Corey W. Lafitte
One Shell Square
30th Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Jean M. Hall
One IBM Plaza
Suite 4300
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewett
P.O. Box 080868
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andersen
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
701 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Winter Bldg.
2 Dexter Avenue
P.O. Box 78
Montgomery, AL 36104

DISTRICT OF COLUMBIA CIRCUIT & FEDERAL CIRCUIT
James J. Bartemeyer
International Square
Suite 1275
1875 Eye Street, N.W.
Washington, DC 20006

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312/988-5685

STAFF ASSISTANT
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750 North Lake Shore Drive
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June 29, 1987

RECEIVED JUL 07 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: ANTHONY J. SCIRICA
United States Court of Appeals
for the Third Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Anthony J. Scirica for appointment as Judge of the United States Court of Appeals for the Third Circuit.

A substantial majority of our Committee is of the opinion that Judge Scirica is "Exceptionally Well Qualified" for this appointment. The minority found him to be well qualified.

Sincerely,

Robert B. Fiske, Jr.

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

   William D. Hutchinson

2. Address: (List current place of residence and office address(es).

   Residence:

   Box 914, RD#3, Schuylkill Haven, Pennsylvania 17972

   Offices:

   Schuylkill County Court House,
   Pottsville, Pennsylvania 17901

   Forum Building, Room 352,
   P.O. Box 1172
   Harrisburg, Pennsylvania 17108

3. Date and place of birth

   June 20, 1932 at Minersville, Pennsylvania.

4. Marital Status: (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to Louise Meloney on October 26, 1957.

   Occupation:

   Registered Dietician - Self employed

   Consultant to:

   Buffalo Valley Lutheran Village
   Lewisburg, Pa.

   Cuisine Management Services, Inc.
   Emmaus, Pa. 18049

Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Moravian College, Bethlehem, Pennsylvania
1950 - 1954
B.A., Magna Cum Laude

Harvard Law School, Cambridge, Massachusetts
1954 - 1957
J.D., 1957

Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Partner - Williamson, Friedberg & Jones, Pottsville, Pa. - 1963 - December, 1976;

Proprietor - Law Offices of Wm. D. Hutchinson - January, 1977 - December 1979;

Partner - Hutchinson, Heitmiller & Nickels, P.C., Pottsville, Pa. - January, 1980 December, 1981;

Member - Pennsylvania House of Representatives, Harrisburg, Pa. December, 1972 - January, 1982;

Justice, Supreme Court of Pennsylvania, Philadelphia, Pittsburgh and Harrisburg, Pa. - January 4, 1982 - present.

Solicitor and Director - Schuylkill Citizens Savings and Loan Association, Cressona, Pa., 1966 - 1981;

Solicitor - Blue Mountain School District, Orwigsburg, Pa., 1967 - 1981.

Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No

8. Honors and Awards: List any scholarships, fellowship, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

John Amos Comenius Award, Moravian College, 1982;

Robert Morris Award, Welsh Society of Philadelphia, 1986.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association, member of section on Judicial Administration;

Pennsylvania Bar Association;

Schuylkill County Bar Association, Treasurer - 1961 - 1963 and Chairman on Continuing Legal Education - 1963 - 1966;

American Judicature Society;
Pennsylvania Judicial Council 1980 - 1982;

Pomeroy Commission for Study of the Pennsylvania Unified Judicial System - 1979 - 1981;

Chairman - Sub-Committee on Courts - Pennsylvania House of Representatives - 1979 - 1982;

Judiciary Committee - Pennsylvania House of Representatives - 1973 -1982;

Pennsylvania Supreme Court liaison with Pennsylvania Appellate Rules Committee - 1984 to present;

Institute of Judicial Administration, New York, New York;

Lecturer for Schuylkill County Bar on Estate Planning;

Member Procedural Rules Committee, Schuylkill County Bar Association.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong (such as civic, educational "public interest" law, etc.).

Cressona Lodge, 426 F&AM, Caldwell Consistory, Rajah Shrine, Tall Cedars, St. David's Society of Schuylkill

and Carbon Counties, Cressona Lions Club, former Lay Leader and former Chairman Board of Trustees, First United Methodist Church, Pottsville, PA.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

Schuylkill County Court of Common Pleas - January 29, 1958

Pennsylvania Supreme Court - April 21, 1958

Pennsylvania Superior Court - March 24, 1960

United States Court of Appeals for the Third Circuit - September 24, 1965

United States District Court for the Eastern District of Pennsylvania - December 21, 1966

Tax Court of the United States - June 16, 1967

Commonwealth Court of Pennsylvania - March 31, 1971

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written. Please supply a copy of any significant speech by you on constitutional law or national policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"A Part of the System" 59 Temp. L.Q. 545 (1986). (Foreword to the 1985 Temple Law Quarterly "Supreme Court Review".)

Book Review, 29 Am. J. Juris. 216 (1984) (reviewing Guido Calabresi, A Common Law for the Age of Statutes).

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent - Last physical examination - February, 1987.

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each court.

Elected Justice of the Supreme Court of Pennsylvania on November 3, 1981. Inducted January 4, 1982.

The Supreme Court is the highest appellate court in Pennsylvania. It has appellate jurisdiction over final orders of the state's intermediate appellate courts, viz. the Superior Court and the Commonwealth Court. Appeals to the Supreme Court are generally discretionary, granted through petitions for allowance of appeal, procedurally analogous to petitions for certiorari. Certain cases are directly appealable to the Supreme Court (e.g. appeals from death sentences, appeals from original actions in Commonwealth Court, appeals from decisions in which a Common Pleas Court has held a state statute unconstitutional, certain appeals involving state tax assessment and appeals from certain state agencies). The Supreme Court also has original, but not exclusive, jurisdiction in cases involving writs of habeas corpus, coram nobis, mandamus, prohibition and quo warranto. Finally, the Pennsylvania Supreme Court has discretionary plenary jurisdiction over any matter of immediate and transcending public concern, which it may exercise upon its own motion or petition of the parties.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

1) Cummings, et al v. National Railroad Passenger Corp., ___ Pa. ___, 523 A.2d 338 (1987).

Stevenson v. General Motors Corporation, ___ Pa. ___, 521 A.2d 413 (1987);

Martin v. Johns-Manville Corp., 508 Pa. 154, 494 A.2d 1088 (1985);

Boundary Drive Associates v. Shrewsbury Twp., 507 Pa. 481, 491 A.2d 86 (1985);

Baker v. Comm. Pa. Human Relations Commission, 507 Pa. 325, 489 A.2d 1354 (1985);

Penflex, Inc. v. Kenneth Bryson, et al, 506 Pa. 274, 485 A.2d 359 (1984);

Martino v. Transport Workers' Union of Philadelphia, 505 Pa. 391, 480 A.2d 242 (1984);

Guy v. Liederbach, 501 Pa. 47, 459 A.2d 744 (1983);

Hazelwood Lumber Co., v. Smallhoover, 500 Pa. 180, 455 A.2d 108 (1982);

Commonwealth v. Weinstein, 499 Pa. 106, 451 A.2d 1344 (1982);

2) Recently the United States Supreme Court granted certiorari, vacated our decision in Commonwealth v. Lutz, 512 Pa. 192, 516 A.2d 339 (1986), vacated 55 U.S.L.W. 3643 (1987) and remanded for further proceedings in light of United States v. Dunn, 55 U.S.L.W. 4251 (1987). I authored the majority opinion in Lutz, in which we held the Commonwealth's search of a non-hazardous waste facility violated the Fourth Amendment to the United States Constitution. We held that the warrantless inspection provisions of the Solid Waste Management Act, 35 P.S. §§ 6018.101-6018.-1003, are invalid and the "open fields doctrine" did not apply. The Dunn case deals, in part, with the "open fields doctrine". We have scheduled the case for reargument.

To my knowledge this is the only case in which I wrote the lead opinion that the United States Supreme Court granted certiorari or considered an appeal.

3. In Re Matter of Judicial Inquiry and Review Board v. Judge Bernard Snyder, ___ Pa. ___, 523 A.2d 294 (1987).

In Re Handwriting Exemplar of Neil Casale, ___ Pa. ___ 517 A.2d 1260 (1986).

Commonwealth v. Lutz, 512 Pa. 192, 516 A. 2d 339 (1986).

Western Pennsylvania Socialist Workers v. Connecticut General Insurance, Co., 512 Pa. 23, 515 A.2d 1331 (1986).

Commonwealth v. Gray, 509 Pa. 476, 503 A.2d 921 (1985).

In Re Petition for Enforcement of Subpoenas to John Doe Corporations A, B, C, D and E, 507 Pa. 137 489 A.2d 182 (1985).

Krenzelak v. Krenzelak, 503 Pa. 566, 469 A.2d 987 (1983).

Martin v. Unemployment Compensation Board of Review, 502 Pa. 282, 466 A.2d 107 (1983).

United Farm Bureau Mutual Insurance Co. v. United States Fidelity and Guarantee Co., 501 Pa. 646, 462 A.2d 1300 (1983).

Commonwealth v. Norris, 498 Pa. 308, 446 A.2d 246 (1982).

Commonwealth Department of Public Welfare v. Molyneaux, 498 Pa. 192, 445 A.2d 730 (1982).

Commonwealth v. Moyer, 497 Pa. 643, 444 A.2d 101 (1982).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Elected to the Pennsylvania House of Representatives in November, 1972. Re-elected for five terms.

Appointed Schuylkill County Solicitor 1969-71.

Appointed Schuylkill County Assistant District Attorney 1963 - 69.

17. Legal Career:

a. Describe chronologically your law practice and experience after your graduation from law school including:

1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.

I have never served a judicial clerkship.

2) whether you practiced alone, and if so, the addresses and the dates.

I practiced alone in Pottsville, Pa. from February to April, 1958 and again from January, 1977 to December 1979.

3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

In April, 1958, about two months after admission to the bar, I joined the law firm of Houck, Bohorad & Lipkin as an associate and practiced with it until December 1961. That firm is now known as Lipkin, Stutzman, Marshall & Bohorad and has offices at One Norwegian Plaza, Pottsville, PA.

In January, 1962, I joined the law firm of Williamson, Friedberg & Jones as an associate, became a partner in 1963 and withdrew in January, 1977. It now has offices at One Norwegian Plaza, Pottsville, PA.

After I left Williamson, Friedberg & Jones, I maintained a practice, as a sole practitioner, at 300 South Centre Street, Pottsville, PA, until December, 1979.

In January 1980, I established a professional corporation for the practice of law with Edward H. Heitmiller, Esq. and Thomas J. Nickels, Esq. under the firm name of Hutchinson, Heitmiller & Nickels, P.C., with offices at the Thompson Building, Pottsville, PA. I withdrew from that firm in December of 1981 to assume my present office of Justice of the Supreme Court of Pennsylvania.

In addition to the foregoing private practice, I served as:

1. An Assistant District Attorney for Schuylkill County from August of 1963 to December of 1969.

2. Solicitor for Washington Township, Schuylkill County - 1966 to 1976.

3. Solicitor - Blue Mountain School District and affiliated agencies and authorities - 1967 - 1981.

4. County Solicitor - Schuylkill County, PA - 1962 - 1973.

5. Solicitor - Schuylkill County Clerk of Courts - 1972 - 1973.

b.1) What has been the general character of your practice dividing it into periods with dates if its character changed over the years?

General practitioner, with extensive experience in both civil and criminal litigation; emphasis on tax, corporate matters and labor law in the public and private sectors, together with estate planning and probate.

Describe your typical former clients, and mention the areas, if any, in which you specialized.

Schuylkill Products, Inc., manufacturer of pre-stressed concrete and concrete pipe;

Schuylkill Citizens Savings and Loan Association;

Blue Mountain School District;

Auburn Knitting Mills, Inc., knitter and finisher of ready to wear garments;

Tonolli Corp., Nesquehoning, recycler of nonferrous metals;

Various liability insurance carriers in personal injury, products liability and workmen's compensation cases;

PHICO, medical malpractice insurance carrier in association with Edward H. Heitmiller, Esq.;

Phillips Film Corp., formerly American Renolit Corp., wholly owned subsidiary of Phillips Petroleum Co., manufacturer of vinyl plastics;

J. Robert Bazley, Inc., highway contractor.

Although my practice was general in nature, I did have considerable experience in workmen's compensation and labor law and developed special skills in those areas.

c.1) Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Regularly.

c.2) What percentage of these appearances was in:

a) Federal courts.

Approximately 15%

b) State courts of record.

Approximately 75%

c) Other courts.

Approximately 10%

c.3) What percentage of your litigation was:

a) Civil.

Approximately 60%

b) Criminal.

Approximately 40%

c.4) State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In excess of one hundred as sole or chief counsel, and an additional twenty-five to fifty as associate counsel.

c.5) What percentage of these trials was:

a) Jury.

Approximately 75%.

b) Non-jury.

Approximately 25%.

18. Litigation: Describe ten of the most significant litigated matters which you personally handled and give the citations, if the cases were reported. Give a capsule summary of the substance of each case, and a succinct statement of what you believe to be the particular significance of the case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case a) the dates of the trial period or periods, b) the name of the court and the name of the

judge before whom the case was tried, and c) the individual name, address and telephone numbers of co-counsel and of counsel for each of the other parties.

1. Pennsylvania Association for Retarded Children v. Kurtzman, Civil Action No. 71-42 (E.D. Pa.) (ultimate disposition 334 F. Supp. 1257 (E.D. Pa. 1971)).

I was special counsel for Intermediate Unit 29 and various local school districts on objections to a consent decree in a class action against the state Secretary of Education and all Pennsylvania School Districts and Intermediate Units before three judge panel presided over by District Judge Masterson, December 1971. I participated in drafting an amended decree with various co-counsel from other school districts and Intermediate Units. Opposing counsel was Thomas Gilhool, Esq., 1315 Walnut Street, Philadelphia, PA 19107 - (215-735-7200). This case resulted in important changes in the provision of special education for the mentally retarded in Pennsylvania and led to major legislative and regulatory changes. The original consent decree in the class action was negotiated between counsel for the Commonwealth and plaintiff's counsel without consulting the local school districts or intermediate units charged with administering it. The decree posed serious administrative and fiscal problems at that level. The hearings on the objections and consequent amendments to the decree had, in my opinion, a major part in expediting the implementation of a meaningful program for education of mentally retarded persons in Pennsylvania.

2. Schuylkill Products, Inc. v. Lehigh Foundations, Inc., S-452 March Term, 1970.

I served as counsel for the plaintiff. Opposing counsel was Howard Stutzman, Esq., deceased. This was an Assumpsit action in the Court of Common Pleas of Schuylkill County by a manufacturer of sewer pipe, for the price and other related damages, against the general contractor for a municipal sewerage system in the Harrisburg area before Heffner, J. and a jury. It resulted in a verdict for substantially all of the plaintiff's claim.

3. Harrisburg Coalition Against Ruining the Environment v. Volpe, U.S. Secretary of Transportation et al, No. 71-43 Civil (M.D. Pa.) (ultimate disposition 330 F. Supp. 918 (M.D. Pa. 1971)).

I served as chief counsel to J. Robert Bazley, Inc., general contractor, in an environmental action brought to restrain construction of the Harrisburg River Relief Route and its interchange with Interstate 81, before Nealon, J. Separate counsel represented the U.S. Department of Transportation, PennDot, the City of Harrisburg, and the U.S. Environmental Protection Agency. Opposing counsel was Robert J. Sugarman, Esq., 101 North Broad St., Philadelphia, PA 19107 (215-751-9733). I succeeded in having the action against my client dismissed, a condition precedent to its successful prosecution of its breach of contract claim against PennDot before the Pennsylvania Board of Claims, formerly the Board of Arbitration of Claims. The contract claim settled before trial by payment of delay damages to my client in mid-six figures.

4. McDonald v. Miners Broadcasting Service, Inc. and John W. Angst.

I was co-counsel for the defendant broadcasters in a 1962 equity suit in the Court of Common Pleas of Schuylkill County seeking to restrain the broadcast of editorials attacking a candidate for Pennsylvania General Assembly in the 1962 General Election. Plaintiffs were granted an ex parte preliminary injunction by the Court of Common Pleas, Dalton, J. We had the decision reversed three days before election by the Supreme Court of Pennsylvania despite plaintiff's dilatory actions in the court below. Opposing counsel was Ralph W. Bashore, deceased. My co-counsel in the Common Pleas proceeding was Calvin J. Friedberg, deceased. With me in the Supreme Court proceeding was Joseph H. Jones, Esq., Pottsville, Pa.

5. Close and Wollyung v. Miners Broadcasting Service, Inc. No. 126 January Term, 1961 (Schuylkill County C.P.).

I served as co-counsel with C. J. Friedberg, Esq., deceased, and Joseph H. Jones, Esq., One Norwegian Plaza, Pottsville, PA 17901 (717-622-5933), in a civil action for libel in the Court of Common Pleas of Schuylkill County by the Mayor and Chief of Police of the City of Pottsville against a radio station. The action arose out of radio editorials calling for impeachment of these officials. Opposing counsel was Hon. Louis G. Hill, 1001 East Penn Square Building, Philadelphia, PA 19107 (215-686-1776). Following New York Times v. Sullivan and Gardner v. Louisiana, 1970-73 we achieved a settlement highly favorable to defendant. To my knowledge this was the first case in

the Commonwealth of Pennsylvania in which New York Times v. Sullivan played a material role. It was filed before the U.S. Supreme Court decision. We successfully utilized it to obtain a minimal settlement in a case which had a dangerously high potential under prior law. Although the case did not reach trial, discovery was extensive and there were numerous motions and ancillary court proceedings involving inter alia the Journalists' Shield Law. The Hon. James J. Curran, then President Judge of the Court of Common Pleas of Schuylkill County presided.

6. Andrew H. Vaughan, Petitioner v. Pa. Department of Education, No. 611, C.D. 1979, reported at 52 Pa. Commonwealth Ct. 38, 415 A.2d 150 (1980).

I represented a dismissed civil service employee. We contended that Secretary of Education did not personally approve his dismissal. The employee was reinstated stated. Opposing counsel was Deborah R. Gaber, Esq. Assistant Attorney General, now - 300 North Second St., Harrisburg, PA, 17108; Edward E. Kopko, Esq., 200 Mahantongo St., Pottsville, PA (717-622-6880), was my associate in the matter.

7. In Re Matter of Wire Teleview, Inc. In this case I represented a cable television company. Co-Counsel was George J. Barco, Esq., 411 Chestnut St., Meadville, PA. (814-724-1492), who represented the trade association for cable television. The issue was whether the transmission of cable television signals from network broadcasters by lease, cable, or microwave transmission to independent subscribers was a sale at retail of telephone or telegraph services to the subscribers.

8. In Re Matter of Ost and Ost, Inc., This was an administrative appeal from a sales tax assessment before the Pennsylvania Department of Revenue, Bureau of Sales and Use Tax and the state's Board of Finance and Revenue - circa - 1959. I was co-counsel with Alexander E. Lipkin, One Norwegian Plaza, Pottsville, Pa. (717-622-1811). We successfully defended a large retail and wholesale automobile parts supplier who had accepted blanket exemption certificates from the Department of Revenue under Pennsylvania's Selective Sales and Use Tax Act against an assessment charging lack of good faith for not examining and verifying the particular uses to which purchasers put items capable of use interchangeably for exempt and non-exempt purposes. Our defense required the characterization of inventory sold for each type of exemption over a three

to four year period into classes for each type of exemption and use in order to develop the argument that the burden placed upon the seller by requiring such characterization and investigation did not square with the statute's exemption for good faith reliance on signed blanket exemption certificates. A large assessment which seriously threatened the seller's ability to remain competitive was reduced to about $6,000.00. The case settled at that amount. The Selective Sales and Use Tax Act had been enacted only about two years before this case arose, and I understand the argument we used became the basis for the good faith standard used by the Department of Revenue.

9. Appeals of Aluminum Company of America from Real Estate Tax Assessments, 5-1011-13 September Term 1974, 268-69 March Term 1975 reported at 76 Sch. L.R. 1 (1980).

I was counsel for the Blue Mountain School District in this action by ALCOA challenging the assessment of its Cressona Works, now Cressona Aluminum Co., a major industrial facility. Thomas J. Nickels, Thompson Building, Pottsville, Pa. (717-622-0247) and Peter J. Picotte, II, 2600 Fidelity Building, Philadelphia, PA 19109 (215-875-7032), were counsel for the Borough of Cressona and Schuylkill County respectively. ALCOA was represented by Albert J. Tomalis, Jr., deceased, and Edward H. Heitmiller, Thompson Building, Pottsville, Pa. (717-622-0247). This was a de novo proceeding in the Schuylkill County Court of Common Pleas before Lavelle, J. We presented evidence supporting the original assessment. Though ALCOA's appeal was sustained in part, the reduction in assessment was limited to a figure which the taxing bodies could accommodate without serious disruption.

10. United States v. Brierly ex rel Staino, 387 F. 2d 597 (3d Cir.), affirming 269 F.Supp. 753 (E.D. Pa. 1967); Commonwealth v. Berkery, 429 Pa. 378, 239 A.2d 805 (1968).

As Assistant District Attorney, I represented the Commonwealth along with the then District Attorney Richard Russell, now retired, 230 East Main St., Tremont, Pa., 17981 (717-695-3796). Ralph Staino was represented by John P. Walsh, address unknown, and the Hon. David N. Savitt, 508 City Hall, Philadelphia, Pa. 19107 (215-686-2525). John Berkery was not represented by counsel.

Although both defendants were convicted for the highly publicized burglary of the Rich home in Pottsville, their convictions were overturned through writs of habeas corpus. The defendants argued that the admission of an inculpatory statement by a co-conspirator was an involuntary confession. The statement had been shown to Staino and Berkery and elicited no response. It was admitted at trial under the Pennsylvania tacit admission doctrine. In Commonwealth v. Berkery, supra, the Pennsylvania Supreme Court retroactively rejected the tacit admission defense.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matter that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

After 1972, when I was first elected to the Pennsylvania House of Representatives, my most significant activities involved public service. In that service, however, I continued to pursue legal issues. I participated in drafting amendments to the Probate Code, and drafted and managed to enactment a comprehensive Jury Selection and Compensation Act. I served on the task force which recommended creation of the state office of elected Attorney General and drafted portions of the implementing legislation for that office. I served as Chairman of the Joint State Government Commission, the Pennsylvania Legislature's research arm. I chaired the Pennsylvania House's Ethics Committee and served on its Judiciary, Education, Local Government and Professional Licensure Committees. I helped draft the current Pennsylvania statutes on immunity, electronic eavesdropping and other anticrime measures. I worked on our statute concerning the security and privacy of centrally processed electronic data.

Prior to my legislative service I negotiated collective bargaining agreements for various business clients with local and national unions, as well as for public employers. I served as an advocate before arbitrators on behalf of contractors for public works projects and settled disputes between those contractors and the authorities or municipalities engaging them. For additional legal activities see my answers to 6, 14, 15, 16, 17, 18 supra.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Describe all financial arrangements, stock options deferred compensation agreements, future benefits and other continuing relationships with business associates, clients or customers.

None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will carefully review the applicable canons of ethics and statutes on conflict of interest and recuse myself on any case in which my own interest would create or give the appearance of conflict or partiality. In addition to any case in which recusal is expressly or implicitly required by ethical canons, statutes, or governing case law because of conflict of financial interest, I would recuse myself in any matter in which my personal feelings toward, acquaintance with, or knowledge of the reputation of the parties, their counsel, or their cause, would improperly affect or appear to improperly affect, my judgment.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was a member of the Executive and Policy Committees of the Schuylkill County Republican Committee from 1976 to December, 1981. I took an active part in all local and state primary and general election campaigns.

In 1981 I campaigned for and was elected Justice of the Supreme Court of Pennsylvania. I took office on January 4, 1982.

I campaigned for the Pennsylvania House of Representatives and was elected a member for the 125th District five times in 1972, 1974, 1976, 1978 and 1980.

5. If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?

I have dissolved my financial interest in my law firm under a withdrawal agreement dated January 4, 1982. There remains due me a portion of uncollected of fees for three ongoing matters. They total less than $2,500.00.

6. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

FINANCIAL STATEMENT
OF WILLIAM D. AND LOUISE M. HUTCHINSON
NET WORTH

AS OF JUNE 26, 1987

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	62	666	93	Notes payable to banks—secured			0
U.S. Government securities—add schedule	5	188	00	Notes payable to banks—unsecured			0
Listed securities—add schedule	63	932	00	Notes payable to relatives			0
Unlisted securities—add schedule	30	560	00	Notes payable to others			0
Accounts and notes receivable:				Accounts and bills due		775	00
Due from relatives and friends			0	Unpaid income tax			0
Due from others	2	500	00	Other unpaid tax and interest			0
Doubtful			0	Real estate mortgages payable—add schedule	18	585	82
Real estate owned—add schedule	120	000	00	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts—itemize:			0
Autos and other personal property	29	075	00				
Cash value—life insurance	5	163	00				
Other assets—itemize:							
I.R.A. Accts. (schedule attached)	23	607	00				
Keogh Plan *	17	589	00				
County Retirement Plan *	13	600	00	** Total liabilities	19	360	82
State Retirement Plan *	850	000	00	** Net worth	1,204	520	11
Total assets	1,223	880	93	Total liabilities and net worth	1,223	880	93
CONTINGENT LIABILITIES				**GENERAL INFORMATION**			
As endorser, comaker or guarantor	21	832	00	Are any assets pledged? (Add schedule.)	NO		
On leases or contracts			0				
Legal Claims			0	Are you defendant in any suits or legal actions?	YES	***	
Provision for Federal Income Tax			0	Have you ever taken bankruptcy?	NO		
Other special debt			0				

* Williamson, Friedberg & Jones Keogh Plan - Trustee-Meridian Bank, Reading, PA
Schuylkill County Employees Retirement Fund
Pennsylvania State Employees Retirement Fund

** Actuarial Value

*** Since coming to the bench of the Supreme Court, there have been Federal Civil Rights Actions filed against this Court in connection with our rulings on disciplinary proceedings against lawyers and judges in Pennsylvania as well as actions by state prisoners. These matters are handled by legal counsel in the Administrative Office of Pennsylvania Courts.

Statement Attached by William D. Hutchinson, Nominee for Judge, U.S. Court of Appeals, Third Circuit, to Questionnaire for Judicial Nominees

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

UNITED STATES GOVERNMENT SECURITIES

U. S. Savings Bonds in names of William D. or Louise M. Hutchinson Purchased October 31, 1986

Serial No.	Cost	Face Value	Cash - 6/87
M19485586EE	$500.00	$1,000.00	$ 518.80
M19485587EE	$500.00	$1,000.00	$ 518.80
D14163325EE	$250.00	$ 500.00	$ 259.40
D14163326EE	$250.00	$ 500.00	$ 259.40
D14163327EE	$250.00	$ 500.00	$ 259.40
D14163328EE	$250.00	$ 500.00	$ 259.40
D14163329EE	$250.00	$ 500.00	$ 259.40
D14163330EE	$250.00	$ 500.00	$ 259.40
D14163331EE	$250.00	$ 500.00	$ 259.40
D14163332EE	$250.00	$ 500.00	$ 259.40
D14163333EE	$250.00	$ 500.00	$ 259.40
D14163334EE	$250.00	$ 500.00	$ 259.40
D14163335EE	$250.00	$ 500.00	$ 259.40
D14163336EE	$250.00	$ 500.00	$ 259.40
D14163337EE	$250.00	$ 500.00	$ 259.40
D14163338EE	$250.00	$ 500.00	$ 259.40
D14163339EE	$250.00	$ 500.00	$ 259.40
D14163340EE	$250.00	$ 500.00	$ 259.40
	TOTAL CASH VALUE		$5,188.00

Statement Attached by William D. Hutchinson, Nominee for Judge, U.S. Court of Appeals, Third Circuit, to Questionnaire for Judicial Nominees

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

SCHEDULE OF LISTED SECURITIES

240 Shares, Meridian Bancorp, Inc. at $22.00	$ 5,280.00
100 Shares, Fidelcor at $38.1/2	3,850.00
200 Shares, Keystone Financial Corp. at $21.1/2	4,300.00
100 Shares, Atlantic Richfield Co. at $92.3/4	9,275.00
100 Shares, IBM Corp. at $167.7/8	16,787.50
200 Shares, Jamesway Corp. at $13.1/2	2,700.00
87 Shares, Van Kempen Merritt U.S. Government Fund (husband) at $15.58	1,355.46
673.52 Shares, Van Kempen Merritt U.S. Government Fund (wife) at $15.58	10,493.44
660 Shares, Delaware Group Tax Free Pennsylvania Mutual Fund (husband) at $7.64	5,042.40
330 Shares, Delaware Group Tax Free Pennsylvania Mutual Fund (wife) at $7.64	2,521.20
Cortland Trust Money Market Fund (husband)	830.00
Cortland Trust Money Market Fund (wife)	1,497.00
TOTAL LISTED SECURITIES	$63,932.00

Statement Attached by William D. Hutchinson, Nominee for Judge, U.S. Court of Appeals, Third Circuit, to Questionnaire for Judicial Nominees

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

SCHEDULE OF UNLISTED SECURITIES

640 Shares, Miners National Bancorp, Inc. (husband) at $32.00	$20,480.00
315 Shares, Miners National Bancorp, Inc. (wife) at $32.00	10,080.00
TOTAL UNLISTED SECURITIES	$30,560.00

Statement Attached by William D. Hutchinson, Nominee for Judge, U.S. Court of Appeals, Third Circuit, to Questionnaire for Judicial Nominees

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

REAL ESTATE OWNED

Premises - Wayne Township, Schuylkill County, Pennsylvania Frame dwelling with attached garage on 3 acres, landscaped, fenced with stable	$100,000.00
Premises - 445 Carbon Street, Minersville, Pennsylvania	20,000.00
TOTAL REAL ESTATE OWNED	$120,000.00

Statement Attached by William D. Hutchinson, Nominee for Judge, U.S. Court of Appeals, Third Circuit, to Questionnaire for Judicial Nominees

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

I.R.A. ACCOUNTS

Pennsylvania State Employees Credit Union (husband)	$ 8,382.00
Pennsylvania State Employees Credit Union (wife)	6,999.00
W. H. Newbold's (husband)	3,560.00
W. H. Newbold's (wife)	4,666.00
TOTAL I.R.A. ACCOUNTS	$23,607.00

Statement Attached by William D. Hutchinson, Nominee for Judge, U.S. Court of Appeals, Third Circuit, to Questionnaire for Judicial Nominees

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

REAL ESTATE MORTGAGES PAYABLE

Mortgage held by Schuylkill Citizens Savings and Loan Association, Cressona, Pennsylvania, on premises situate in Wayne Township, Schuylkill County, Pennsylvania - balance	$18,585.82

III. GENERAL (PUBLIC)

1. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

My views on the role of a judge are generally set forth in my article entitled A Part of A System, 59 Temp. L.Q. 545 (1985):

> [Our] task must be approached boldly, but with a sense of our own fallibility. It requires a feel for the strengths and weaknesses of the common law tradition with its cautious, incremental approach to concrete disputes on the basis of induction and analogy from principles used to resolve prior concrete disputes. It requires us to recognize the vagaries of the adversary system and yet live within it, to appreciate both our own role in the legal system and that of other institutions and individuals. Only

> with such an appreciation will we be able to restrain ourselves from imposing our own personal views and solutions on the problems that come before us. Judges in America are not philosopher-kings, indebted to Plato, but are part of a representative democracy that draws its rationale from Montesquieu. The judiciary, largely free from external checks on its power, can maintain its legitimate authority only by disciplined adherence to principled rules of decision and the restraints of our written constitutions. These documents, whose language is flexible but not unbounded, were aptly fashioned to permit correction of the defects in our system without denying its legitimacy. Id. at 548-549.

Consistent with that statement I believe that the judicial branch must guard against developing a perception of itself as the preferred engine of social change. This perception easily grows out of a false analogy to its historically necessary intervention into the great racial problems of this nation when the political branches of government, especially the national legislature, were paralyzed in dealing with issues of racial discrimination. Pursuit of that analogy can cause our courts to lose sight of their institutional limitations in dealing with other social, political and economic issues. This perception, coupled with the judiciary's generally desirable political insulation can lead the judicial branch into a case by case ad hoc intrusion into the political process leaving the political branches which represent the people too little voice in the democratic process. Such ad hoc intrusion often also requires the legislative branch to appropriate large sums from limited available tax revenues for one area of social concern at the expense of others.

The judicial branch is not capable of gathering the complex, interrelated facts, necessary to make correct decisions in areas of essentially irrational power conflict. Courts must work within the rules of evidence and the limitations of an adversary record. The deductive logic courts use is generally not well adapted to solving such problems. Proper resolution of those problems requires knowledge of facts not available in a record developed under the rules of evidence. Carried too far this process can convert an institution designed by the founding fathers as a brake on the excesses of the majority, into an increasingly isolated super legislature not subject to political check.

Public dissatisfaction and confusion about decisions perceived to be irrational or out of tune with the needs of the people lead to disrespect for the courts. The judicial branch as an institution must be preserved as authoritative and impartial if our written constitutions are to remain bulwarks against the polar forces of anarchy and despotism. My education in history and political science, my experience in the law as both a public prosecutor and a private lawyer and my service in the legislature convince me of the wisdom of judicial restraint. The specific criticisms listed deal with the use of class actions, consent decress, special masters, jurisdiction of court and statutory interpretations. My views on them are best evaluated in the context of the opinions on those subjects I have written or joined.

2. What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.

Before there were paid public defenders I represented indigent criminal defendants without compensation and made myself routinely available for that service at each term of criminal court in my county form 1958 to 1963. Before there was government financed legal aid I represented tenants in rent disputes, wives and children seeking support, fathers seeking visitation with their children and debtors seeking relief from creditors they could not pay for, at least nominal fees. I continued to provide such services throughout my career at nominal or greatly reduced rates to persons whose modest income made them ineligible for public funded services, but was not enough to buy them privately. I supported an end to discrimination on religion, race or sex in those private organizations I choose to join and I have not joined those which practice it. I have encouraged minority persons to seek membership in my church and I have actively promoted non-discriminatory personnel practices in my private business and public office.

In addition I served as a member of the Cressona School Board from 1965 to 1966. During the mid-sixties I was Chairman of the Cressona Borough Planning Commission. After the Borough adopted its land use ordinances, I became Chairman of its Zoning Hearing Board, a position I held until 1972.

SUPPLEMENT TO QUESTIONNAIRE FOR JUDICIAL NOMINEES
SUBMITTED BY WILLIAM D. HUTCHINSON, NOMINEE FOR JUDGE
OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

DATED: JULY 15, 1987

I. BIOGRAPHICAL INFORMATION (PUBLIC)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse in membership. Give the same information for administrative bodies which require special admission to practice.

There has been no lapse in my admissions to any of the courts to which I have been admitted to practice.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None, except as shown on the original questionnaire.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

None, except as shown on the original questionnaire.

2. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

None, except as shown on the original questionnaire.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

A copy of the Executive Personnel Financial Disclosure Report required by the Ethics in Government Act of 1978 is attached.

SUPPLEMENT TO QUESTIONNAIRE FOR JUDICIAL NOMINEES
SUBMITTED BY WILLIAM D. HUTCHINSON, NOMINEE FOR JUDGE
OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

DATED: JULY 15, 1987

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Set forth in answers to original questionnaire.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I do not belong and I have not belonged to any such organization to the best of my knowledge. For further answer, see my statements to original questionnaire.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

No. There is no selection commission in my jurisdiction to recommend candidates to the Circuit Court of Appeals. I received a call from the Justice Department inviting me to come to Washington for an interview. I did so and I was interviewed by Stephen Markman, Esquire, Assistant Attorney General in the Office of Legal Policy, and other members of that Department. Thereafter, I was interviewed by the FBI and a designee of the American Bar Association Committee on the Judiciary.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be inerpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No.

AMERICAN BAR ASSOCIATION

Standing Committee on
Federal Judiciary
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

CHAIRMAN
and Member at Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite 1600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James K. Hoyland, Sr.
1400 First Virginia Bank Tower
150 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Gene W. Lafitte
One Shell Square
50th Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
One IBM Plaza
Suite 4100
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewett
P.O. Box 80268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Hachmeister, Jr.
Winter Bldg.
2 Dexter Avenue
P.O. Box 78
Montgomery, AL 36104

DISTRICT OF COLUMBIA
CIRCUIT & FEDERAL
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 Eye Street, N.W.
Washington, DC 20006

BOARD OF GOVERNORS
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Chicago, IL 60611
(312) 988-5685

STAFF ASSISTANT
Diane Livingston
750 North Lake Shore Drive
Chicago, IL 60611
(312) 988-5701

June 29, 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

JUDICIARY COMMITTEE
1 JUL -7 PM 1:05

Re: WILLIAM D. HUTCHINSON
United States Court of Appeals
for the Third Circuit

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of William D. Hutchinson for appointment as Judge of the United States Court of Appeals for the Third Circuit.

Our Committee is unanimously of the opinion that Judge Hutchinson is "Well Qualified" for this appointment.

Sincerely,

Robert B. Fiske, Jr.

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

RESPONSE TO QUESTIONNAIRE
FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

ANSWER: John Daniel Tinder.

2. Address: list current place of residence and office addresses.

ANSWER: Office:
U.S. Court House
46 East Ohio Street
Indianapolis, Indiana 46204

Home:
5254 North Delaware Street
Indianapolis, Indiana 46220

3. Date and Place of Birth:

ANSWER: February 17, 1950, Indianapolis, Indiana.

4. Marital status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

ANSWER: Married to Jan M. Carroll.
Spouse's occupation: lawyer.
Spouse's employer: Barnes & Thornburg, attorneys at law
1313 Merchants Bank Building
11 South Meridian Street
Indianapolis, Indiana 46204

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

ANSWER:

Undergraduate:

Indiana University (Bloomington)
Bachelor of Science in Business (Cum Laude)
Dates of Attendance: September 1968 to June 1972.
Degree Granted: June 1972.

Law School:

Indiana University (Bloomington)
Juris Doctor
Dates of Attendance: June 1972 to January 1975.
Degree Granted: January 1975.

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were

connected as an officer, director, partner, proprietor, or employee since graduation from college.

ANSWER:

a) January 1973 to May 1974
Law Clerk
Applegate & Pratt
Attorneys at Law
321 East Kirkwood
Bloomington, Indiana 47401

b) June 1974 to October 1974
Law Clerk
Office of United States Attorney
Room 274, U.S. Court House
46 East Ohio Street
Indianapolis, Indiana 46204

c) January 1975 to April 1975
Bail Commissioner
Marion County Municipal Courts
Room 1601 City-County Building
Indianapolis, Indiana 46204

d) August 1975 to July 1977
Assistant United States Attorney
Southern District of Indiana
U.S. Court House
Indianapolis, Indiana 46204

e) August 1977 to April 1982
Partner
TINDER & TINDER
(Formerly TINDER & O'DONNELL)
Attorneys at Law
808 First Indiana Building
Indianapolis, Indiana 46204
I was a partner in this firm. I also held the part-time positions listed below during my membership in the firm:

(1) August 1977 to December 1978
Public Defender
Marion County Criminal Court, Room No. 3
The Honorable Charles C. Daugherty, Presiding
Room W-242, City-County Building
Indianapolis, Indiana 46204

(2) January 1979 to May 1982
Chief Trial Deputy
Marion County Prosecutor's Office
Room 560, City-County Building
Indianapolis, Indiana 46204

(3) September 1980 to present
Adjunct Professor
Indiana University School of Law
735 West New York Street
Indianapolis, Indiana 46204

f) May 1982 to May 1984
Associate
Harrison & Moberly
Attorneys at Law
777 Chamber of Commerce Building
320 North Meridian Street
Indianapolis, Indiana 46204

g) May 1984 to Present
United States Attorney
Southern District of Indiana
Room 274, U.S. Court House
46 East Ohio Street
Indianapolis, Indiana 46204

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

ANSWER: No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

ANSWER:

Graduate of first Indiana University School of Business honors program.

Member of Beta Gamma Sigma, national business honorary.

Dean's list throughout undergraduate school.

Hoosier Scholar (1968-1972)

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

ANSWER:

Member, Indiana Supreme Court Committee on Character and Fitness, 1982 - 1984

Bar Associations:

Indianapolis Bar Association (Member; Criminal Justice, Litigation and Business Law Sections; Executive Committee of the Criminal Justice Section, participant in Law for Laymen and Law Day programs)

Indiana State Bar Association (Member; Criminal Justice Section and previously the Executive Committee of this Section)

Indiana Trial Lawyers Association

American Bar Association (Member, Litigation and Criminal Justice Sections)

Seventh Circuit Bar Association

Federal Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong (such as civic, educational, "public interest" law, etc.).

ANSWER:

I belong to no organizations which are active in lobbying before public bodies, other than the bar associations listed above.

Other Organizations:

Cathedral Kitchen (volunteer soup kitchen which feeds the indigent). I participate in food preparation and serve on the Executive Committee.

Indiana University School of Law (Bloomington) Board of Visitors.

Beta Theta Pi (social fraternity), Indianapolis Alumni Association

Indianapolis Legal Aid Society.

St. Thomas More Society (Catholic Lawyers Organization)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

ANSWER:

Indiana Supreme Court, (April 1975);
United States District Court, Southern District of Indiana, (April 1975);
United States District Court, Northern District of Texas, (January 1980);
United States Court of Appeals, Seventh Circuit, (September 1975);
United States Supreme Court, (June 1978).

12. Published Writings: List the titles, publishers, and dates of books, articles, reports or other published material you have written. Please supply a copy of any significant speech by you on constitutional law or national policy. If there were press reports about the speech, and they are readily available to you, please supply them.

ANSWER: None.

13. Health: What is the present state of your health? List the date of your last physical examination.

ANSWER: Excellent.

Last exam: July 18, 1986, updated on February 17, 1987.

14. Judicial Office (if applicable): State (chronologically) any judicial office you have held, whther such position was elected or appointed, and a description of the jurisdiction of

each such court.

ANSWER: None.

15. Citations: If you are or have been a judge, provide citations for: 1) the ten most significant opinions you have written; 2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and 3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

ANSWER: Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for public office.

ANSWER:

Board Member, Bloomington Board of Parks and Recreation;
Appointed;
Dates of Service: January 1972 through January 1973.

Board Member, Bloomington Housing Quality Appeals Board;
Appointed;
Dates of Service: January 1973 through June 1974.

Assistant United States Attorney;
Appointed;
Dates of Service: August 1975 through July 1977.

Deputy Prosecutor, Marion County;
Appointed;
Dates of Service: January 1, 1979 to December 31, 1982.

United States Attorney;
Appointed;
Dates of Service: May 25, 1984 to Present.

I have never been a candidate for elective public office.

17. Legal career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

ANSWER: Not applicable

2. whether you practiced alone, and if so, the addresses and dates;

ANSWER: Not applicable

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

ANSWER:

(1) January to April 1975
While awaiting the bar examination results and admission to the bar, I held two part-time jobs:

a) Bail Commissioner
Marion County Municipal Courts
City-County Building, Room 1601
Indianapolis, Indiana 46204

In this part-time employment, I interviewed recently arrested persons in the city lockup and the Marion County jail in order to make decisions on the conditions of pre-trial release. This process also included verification of the information provided by the detained persons.

I was authorized to set the condition of release for persons charged with misdemeanors and make recommendations to the trial court in felony cases.

b) Clerk
Tinder and O'Donnell
Attorneys at Law
808 First Federal Building
Indianapolis, Indiana 46204

In this part-time employment, I assisted in pre-trial preparation and investigation of civil and criminal matters. I also researched legal problems, drafted pleadings and memoranda and otherwise assisted the two attorneys in this firm.

(2) April to July 1975
Associate
Tinder and O'Donnell
Same address as above

In addition to the duties I had while awaiting admission to the bar, I began making court appearances and representing clients of the firm. During this time, I handled a few court trials on my own and assisted the other attorneys in several other court and jury trials.

(3) August 1975 to July 1977
Assistant United States Attorney
Southern District of Indiana
U.S. Court House
Indianapolis, Indiana 46204

In this position I was responsible for the preparation and trial of both civil and criminal cases in this District. My initial jury trial experience was as associate counsel, but after several months, I began handling jury trials as sole and chief counsel. During my two years at this office, I averaged approximately one jury trial per month.

In addition to trial duties, I was responsible for advising federal agents on legal questions that arose during investigations and for accepting or declining prosecution following the completion of investigation. This duty was rotated among the Assistants, and ordinarily resulted in the review of ten or more cases per Assistant each month.

The duty of Grand Jury supervisor was rotated monthly among the Assistants. This required the scheduling of the Grand Jury sessions, the appearance of witnesses and the return of indictments before the District Courts. The supervisor was responsible for presenting the cases of Assistants who were unavailable to be present at the Grand Jury, in addition to the presentation of his or her own cases. I acted as Grand Jury supervisor for a total of four months.

Each Assistant was responsible for handling his or her own cases on appeal to the Seventh Circuit Court of Appeals. During my employment as an Assistant, I appeared before that Court more than ten times for oral arguments.

The majority of my work as an Assistant was in the criminal area, but I also had civil case responsibility including trial and appellate representation of various federal agencies such as the Food and Drug Administration, the Environmental Protection Agency, the Department of Health, Education and Welfare, the Internal Revenue Service, the Veterans Administration, the Bureau of Prisons and others.

(4) August 1977 to April 1982
Partner
TINDER & TINDER
(Formerly TINDER & O'DONNELL)
Attorneys at Law
Same address as above
My participation in this law practice will be discussed in detail in response to question 17(b)(1). I also held the part-time positions listed below during my membership in the firm:

(a) August 1977 to December 1978
Public Defender
Marion County Criminal Court, Room No. 3
The Honorable Charles C. Daugherty, Presiding
Room M-242, City-County Building
Indianapolis, Indiana 46204

In this part-time employment, I was responsible for the representation of indigents charged with felonies in this Court. This work included pre-trial preparation, plea bargaining, jury and court trials and, in some cases, appeals.

During this employment, I handled one or more jury trials per month as sole counsel. The felony cases ranged from minor thefts to first-degree murder.

(b) January 1979 to May 1982
Chief Trial Deputy
Marion County Prosecutor's Office
Room 560, City-County Building
Indianapolis, Indiana 46204

As second-in-command of this office, I was

primarily responsible for the supervision of the forty felony trial deputies in the six criminal courts in Marion County. This involved approval or rejection of plea bargains, development of trial strategy, handling witness problems, screening of proposed cases, research of legal problems and other matters.

I was involved with the Prosecutor in setting policy for the office. When the Prosecutor was out of town or otherwise unavailable, I made policy decisions in his absence.

Part of my duties included general supervision of other areas of the office including the Municipal and Juvenile Courts, the Child Support and Paternity Division and the Grand Jury Investigation Unit. I assisted in these areas when problems arose and in overall planning, but I did not participate in the day-to-day activities of these parts of the office.

I had personal responsibility for certain major cases in the office in the investigative, pre-trial and trial stages. I handled several major investigations before the Grand Jury, and I averaged more than one jury trial per month while with the Prosecutor's Office. I directly supervised all cases venued out of Marion County.

I participated in the administrative aspects of the office, including decisions regarding the annual budget, personnel, allocating witness and extradition travel expenses and similar matters.

I acted as liaison with the various state, local and federal law enforcement agencies that presented matters to our office for prosecution. This involved advising these agencies regarding search and arrest warrants being sought, providing general training advice and conducting meetings regarding problems on particular cases.

I was responsible for training all deputies in our office in trial techniques and recent legal developments. Monthly meetings were held for this purpose, along with half-day seminars which I organized and presented about every six months.

Each year, twelve law student interns worked under my direct supervision, and I was responsible for the design and presentation of the annual training seminar for each new class of interns.

Finally, I was responsible for handling appellate or original action (seeking writs of mandate or prohibition) litigation and federal habeas corpus matters in which the Prosecutor's Office was involved directly. In this capacity, I prepared briefs filed in the Indiana Supreme Court and Court of Appeals, the U.S. District Court for the Southern District of Indiana, and the United States Supreme Court. I also presented oral arguments before the Indiana Supreme Court and Court of Appeals.

(5) May 1982 to May 1984
Associate
Harrison & Moberly
Attorneys at Law
777 Chamber of Commerce Building
320 North Meridian Street
Indianapolis, Indiana 46204
In May of 1982, my father and partner at Tinder and Tinder retired from an active general practice, and now handles only probate matters on a part-time basis. In order to continue the litigation aspects of our practice, I associated with this fifteen-person firm. I handled primarily litigation matters concerning commercial disputes and suits by individuals in the areas of contracts, personal injuries, real estate, zoning matters, class actions and civil rights matters. I also served as general counsel to a life insurance company, a residential construction company and several other small businesses.

(6) May 1984 to Present
United States Attorney
Southern District of Indiana
Room 274, U.S. Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204

In practice, my primary duty as U.S. Attorney is managing an office of 18 Assistant U.S. Attorneys and a comparably sized clerical staff. Additionally, I formulate the policy and practices of the office with respect to its criminal investigations and prosecutions and with respect to the civil representations of the many client federal agencies. I serve as the liaison between our office and the Department of Justice, the courts, the investigative agencies (such as the Federal Bureau of Investigation, the Internal Revenue Service and the Drug Enforcement Administration) and the agencies we represent in civil matters (such as Health and Human Services, the Farmers Home Administration, etc.).

I also serve as Chairman of the Law Enforcement Coordinating Committee for the district, a group consisting of representatives of all federal criminal investigative agencies, the Indiana State Police, county prosecutors, sheriffs and local police. This group formulates priorities for criminal prosecutions on the federal, state and local levels, and effectuates cooperative investigative efforts. The U.S. Attorney is considered to be the chief law enforcement officer in the district.

My duties as a lawyer in this office often are secondary to my duties as a manager, but I still appear regularly in court on behalf of the Government. As U.S. Attorney, I have handled all phases of both the civil and criminal work of the office on certain cases, including interrogation of witnesses before the Grand Jury, trials before juries and courts, and appeals to the United States Court of Appeals for the Seventh Circuit. I have handled civil matters for the Government in both state and federal courts.

The jurisdiction of the office consists of sixty counties and approximately two-thirds of the population of the State of Indiana. Seventy percent of our time is spent on criminal cases.

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I have served on various committees within the Department of Justice in connection with my role as U.S. Attorney.

Finally, I have served as the media contact and public representative of the U.S. Attorney's Office. The media work consists primarily of answering media inquiries, preparing press releases and participating in various interviews and press conferences. I have spoken to numerous citizen groups, bar associations, service clubs, law enforcement groups and others in fulfilling my duties as public representative.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

ANSWER:

After leaving the U.S. Attorney's Office in late July, 1977, I began private practice with my father. During the first several months, I handled primarily personal injury, corporate and domestic matters, along with most of the criminal cases that were handled by the firm at that time. Throughout 1978, my personal clientele grew to include several small businesses and larger civil matters. I also assisted the two other attorneys with clients of the firm. I participated in several jury trials while with this firm. As indicated above, I was also a part-time public defender in one of the Marion County Criminal Courts. During 1978, I also accepted several appointments as pauper counsel in criminal cases in the U.S. District Court for the Southern District.

As of the time of my association with the Prosecutor's Office, our firm ceased handling criminal cases. My involvement with the firm diminished somewhat after I joined the Prosecutor's office. My main practice in the years during which I was with the Prosecutor's office was handling trials of contested civil matters, along with appeals and pre-trial hearings. I participated in several civil jury trials during this time period.

In May of 1982, my father went into semi-retirement. He limited his practice to probate matters only. I chose to associate with a larger firm with an active litigation practice.

From May of 1982 until May of 1984, I was associated with Harrison & Moberly, a firm consisting of fifteen attorneys. Between May and December of 1982, I continued to work part-time for the Marion County Prosecutor's office to complete several Grand Jury investigations and to try the remaining insurance fraud cases that had resulted from a previous investigation.

I continued to represent most of the clients that had been with Tinder & Tinder before the dissolution of that firm. I spent approximately seventy percent of my time on litigation matters and thirty percent acting as general counsel for corporations and businesses.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

ANSWER:

Tinder & Tinder was in the general practice of law. We handled a variety of matters, including domestic disputes, personal injuries, contracts, real estate transactions and probate matters. We had no specialty, but the majority of my contribution to the firm's income was derived from the representation of a state-wide home building company, a small national life insurance company and several small closely held corporations and businesses.

At Harrison & Moberly I was able to spend more time on litigation matters. Most of the litigation I handled involved corporate commercial disputes. I worked on a few criminal cases, but in excess of ninety eight percent of this firm's work was in the area of civil practice.

c. 1. Did you appear in court frequently, occasionally or not at all? If the frequency of your appearances in court has varied, describe each such variance, giving the dates thereof.

ANSWER: Throughout my career, I have appeared in court frequently, although I have appeared in court less frequently since I became U.S. Attorney in May, 1984.

2. What percentage of these appearances was in
a) Federal Courts.

ANSWER: Forty five percent

b) State courts of record.

ANSWER: Fifty four percent.

c. Other courts.

ANSWER: One percent.

3. What percentage of your litigation was

a) Civil.

ANSWER: Sixty-five percent.

b) Criminal.

ANSWER: Thirty-five percent.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

ANSWER:

Sole counsel: more than fifty.
Chief counsel: approximately twelve.
Associate counsel: approximately twelve.

5. What percentage of these trials was

a) Jury
b) Non-jury.

ANSWER:

a) Eighty-five percent.
b) Fifteen percent.

18. Litigation: Describe the ten most significant litigated matters which you personally handled and give the citations, if the cases were reported. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address and telephone numbers of co-counsel and of principal counsel for each of the other parties.

ANSWER:

(1) Case Name: United States v. John D. Lind.
Cause No. IP76-61CR
Court: United States District Court, Southern District of Indiana, Evansville Division

Presiding Judge: Honorable Cale J. Holder (deceased)

Party Represented: United States

Co-Counsel: Charles Goodloe, Jr.
Assistant United States Attorney
Room 246
U.S. Court House
46 East Ohio Street
Indianapolis, Indiana 46204
(317) 269-6333

Opposing Counsel: Attorneys for Lind
F. Lee Bailey
109 State Street
Boston, Massachusetts 02108
(617) 723-1980

Mark W. Shaw
441 South Beverly Drive
Beverly Hills, California 90212
(213) 556-2096

Dates of Litigation: Trial August, 1976; appeal argued in United States Court of Appeals on June 14, 1977, and decided in unpublished decision on August 8, 1977. Certiorari was denied by the United States Supreme Court.

Summary and Significance of the Case:

The first seven counts of the indictment charged John D. Lind, a medical doctor from Anderson, Indiana, with the possession and use of explosives which resulted in the bombing of a plumbing supply company. The final two counts charged Lind with conspiring to obstruct justice and the obstruction of justice with regard to the investigation of the bombing.

Due to a defense motion alleging prejudicial pre-trial publicity, the trial was moved from the Indianapolis Division to the Evansville Division where a jury trial was held.

The jury returned guilty verdicts on five of the explosive device counts, and a not guilty verdict on the obstruction of justice counts.

Lind was sentenced to nine years imprisonment, and his conviction was affirmed on appeal.

During the six-month investigation and the trial of this cause, I acted as co-counsel for the United States with Mr. Goodloe. I wrote the appellate brief and presented the Government's oral argument in the Court of Appeals for the Seventh Circuit.

This case is significant because of the complicated legal and factual problems that were presented. For example, one of the government's chief witnesses, who had participated in conversations with both Lind and other conspirators, was found decapitated prior to trial. This posed difficult problems in the admissibility of various tape recordings that had been made of the conversations.

Lind's nationally known defense counsel, F. Lee Bailey, presented a vigorous defense. Numerous and novel pre-trial, trial and post-trial legal maneuvers were utilized by the defense to make the prosecution effort more difficult. Many of the defense techniques had never been utilized in this part of the country before this case. A wide variety of scientific and technical methods were used as evidence in this trial.

Additionally, the extensive investigation was the joint product of work by the Bureau of Alcohol, Tobacco and Firearms, the Indiana State Police, and the Anderson Police Department, coordinated by the U.S. Attorney's Office.

(2) Name of Case: State of Indiana v. Michael O. Brooks
Cause No. CR77-307C
Court: Marion County Criminal Court, Room No. 3

Presiding Judge: Honorable Charles C. Daugherty
Room W-242
City-County Building
Indianapolis, Indiana 46204
(317) 236-4533

Party Represented: Defendant Michael O. Brooks

Opposing Counsel: Richard Plath
Deputy Prosecutor
Room 560
City-County Building
Indianapolis, Indiana 46204
(317) 236-5297

Dates of Litigation: Trial November 14-15, 1977.
Conviction affirmed, 434 N.E.2d 878 (Ind. 1982)

Summary and Significance of the Case:

I was appointed as a public defender to represent Mr. Brooks on a charge of first-degree murder. The defendant gave a videotaped confession prior to my appointment. My client contended that the killing was in self-defense, despite the fact that he had stabbed the decedent nineteen times.

The jury returned a verdict of guilty of the lesser included offense of second-degree murder and recommended a sentence of fifteen to twenty five years as opposed to life imprisonment. The Judge imposed the recommended sentence.

This case is significant as an example of the quality of defense that I provided for my public defender clients. This was not the only murder case which I handled as a defense lawyer, but it was one of the most severely contested factual situations I faced.

This case illustrates my skills as a trial attorney. The final arguments were crucial to this difficult case, and I was told that my performance was a critical factor in the jury's decision to render a verdict of the lesser included offense, and to recommend the less severe sentence.

(3) Name of Case: State of Indiana v. Gary Burris
Cause No. CR80-053A
Court: Marion County Superior Court, Criminal Division, Room No. 1

Presiding Judge: Honorable John W. Tranberg
Room W-202
City-County Building
Indianapolis, Indiana 46204
(317) 236-4839

Party Represented: State of Indiana

Co-Counsel: J. Gregory Garrison
Garrison and Kiefer
7351 Shadeland Station
Suite 201
Indianapolis, Indiana 46256
(317) 842-8283

Opposing Counsel: Thomas E. Alsip
(Now Judge of the Marion County Superior Court, Criminal Division, Room No. 6)
Room W-306
City-County Building
Indianapolis, Indiana 46204
(317) 236-5464

L. Craig Turner
613 Union Federal Building
Indianapolis, Indiana 46204
(317) 632-5892

Dates of Litigation: Trial December 1-5, 1980. Conviction affirmed 465 N.E.2d 171 (Ind. 1984).

Summary and Significance of the Case:

The defendant was charged with the murder of an Indianapolis cab driver during the course of a robbery. The State asked for the death penalty.

Following a verdict of guilty, the jury recommended the imposition of the death penalty. The sentencing judge accepted the recommendation and sentenced the defendant to death. The evidence involved the testimony of co-defendants and a complicated chain of circumstantial evidence. The jury was sequestered during the trial due to concern about exposure to publicity.

This case is significant because of the seriousness of the crime and penalty involved. As a deputy prosecutor I tried three other death penalty cases. Because the ultimate penalty is involved, I believe that death penalty trials are the true test of a trial lawyer's skills.

(4) Name of Case: Rockwool Industries, Inc. v. Consolidated Rail Corporation
Cause No.: IP80-1054-C
Court: United States District Court for the Southern District of Indiana, Indianapolis Division

Presiding Judge: Magistrate John Paul Godich
Room 232
U.S. Court House
46 East Ohio Street
Indianapolis, Indiana 46204
(317) 269-7252

Party Represented: Rockwool Industries, Inc.

Opposing Counsel: Victor L. Frost II
Bruce Hugon
3665 North Washington Boulevard
Indianapolis, Indiana 46208
(317) 924-9134

Dates of Litigation: Jury Trial June 27-29, 1983.

Summary and Significance of the Case:

In this case my client, Rockwool Industries, sued Conrail for damages caused during the unloading of a rail car on the Rockwool premises. Rockwool contended that the rail car provided by Conrail was defective, and this caused the derailment of the car during the unloading process. Conrail filed a counterclaim against my client in which it was contended that the unloading process used by Rockwool was negligent and was the proximate cause of the derailment. Conrail sought reimbursement for the expenses of repairing the rail car.

The jury returned a verdict in favor of my client and awarded Rockwool a judgment of $33,657.01 against Conrail. This was the largest award for property damages that could have been assessed, based on the evidence.

While this case did not involve a large sum of money by today's standards and I have handled many other cases involving much larger sums, I feel that it was significant in several respects. First, the trial included the testimony of experts in rail car design, railroad practice and in the determination of rail car derailment causation. A great deal of preparation was required to adequately examine and cross-examine these experts.

Second, I am told that this case is one of the first of its kind in this area where an industry proved that the railroad caused a derailment by providing defective equipment. The railroads employ almost all of the qualified experts, and it is extremely difficult for industry to successfully dispute an adverse determination by a railroad. The railroad refused all of my efforts to discuss settlement prior to trial, contending that it had never lost a case of this nature.

Third, the case has special significance for me, because it reflects the quality of trial work I have been able to provide my clients in civil matters. I feel this case demonstrates that my courtroom experience has been balanced between civil and criminal matters.

(5) Name of case: State of Indiana v. Richard Moore
Cause No.: 2SCR80-005
Court: Hamilton County Superior Court, Room No. 2

Presiding Judge:	The Honorable Jerry M. Barr Hamilton County Courthouse Noblesville, Indiana 46060 (317) 776-9647.
Party Represented:	State of Indiana
Opposing Counsel:	Wilmer E. Goering II 1327 Iroquois Drive P.O. Box 826 Madison, Indiana 47250 (812) 273-5230.
Dates of Litigation:	Sentencing trial October 22-24, 1980.

Summary and Significance of the Case:

The defendant, Richard Moore, was accused of killing his wife, her father and a police officer in a shooting spree. The state requested the death penalty be imposed.

This case was unique in two respects. First, the defendant pleaded guilty to the underlying murder charges, which resulted in a sentencing trial being held before the court without a jury. This was the first time a defendant in a capital case had pleaded guilty in Indiana. Novel procedural issues were presented in this case.

Secondly, one of the bases for the death penalty in this case was that the victim of the murder was a law enforcement officer. The facts presented a substantial dispute over whether the defendant was aware that the victim was a police officer. This led to a complex legal question regarding the intent which is required for imposition of the death penalty under this provision. That issue is still on appeal before the Indiana Supreme Court.

At the completion of a three-day sentencing trial, Moore was sentenced to death.

(6) Name of case: State of Indiana v. Sanford Marshall
Cause No.: CR81-007A
Court: Marion County Superior Court, Criminal Division, Room No. 1

Presiding Judge: The Honorable John W. Tranberg
W202 City-County Building
Indianapolis, Indiana 46202
(317) 236-4839

Party Represented: State of Indiana

Associate Counsel: William E. Winingham
P.O. Box 1317
Indianapolis, Indiana 46206
(317) 632-7393.

Opposing Counsel: Dwight Ritter
6840 High Park Drive, Apt. E
San Diego, California 92119
(619) 464-3066

Dates of Litigation: June 15-20, 1981.

Summary and Significance of the Case:

This was a murder prosecution of an accomplice in a robbery-murder which resulted in the deaths of two deputy sheriffs. During the robbery, Marshall posed as a customer in the store, when in fact he had planned the robbery and was serving as the look-out. The other robber forced the store employees and customers into a back room and had them bound and gagged. Marshall and the other robber acted as if Marshall was being forced to bind and gag the hostages. When the police arrived, a shoot-out ensued. Rather than running, Marshall taped his wrists and lay on the floor with the hostages. His partner was killed in the shootout.

When the hostages were freed by police, Marshall continued to play the role of hostage, and after the employees and customers were taken out of the store by police, Marshall disappeared into the crowd. For the most part, the hostages were unaware of Marshall's role in the robbery. Marshall also took on a very different appearance after his escape from the store, which posed major identification problems.

This unique set of facts presented an interesting test of the felony-murder rule in Indiana. A careful investigation disclosed contact between the other robber and Marshall prior to the robbery, including the fact that on the afternoon of the robbery, Marshall had supplied his partner with a firearm which resembled the murder weapon.

At trial, Marshall presented a defense that was partly based on coercion and partly based on alibi. He was a very good witness. As might be expected, the trial was quite dramatic, and the families of the victims and the defendant were emotionally involved. At one point in the trial, Marshall lunged across counsel's table and tried to grab my associate counsel.

The defendant was convicted and sentenced to a long term of imprisonment rather than death.

This case illustrates my experience in handling complicated facts in trials with high stakes.

(7) Name of Case: State of Indiana v. Harry E. Ferguson

Courts and Case Numbers: Marion County Superior Court, Criminal Division, Room No. 2, CR79-2608

Indiana Supreme Court, 680S164

United States Supreme Court, 80-6130

Presiding Judge: (Trial) The Honorable Webster L. Brewer
Room W241 City-County Building
Indianapolis, Indiana 46204
(317) 236-4996.

Party Represented: State of Indiana

Citation of Case: 409 N.E.2d 612 (sub nom State v. McMillan), cert. denied 450 U.S. 1003 (1981)

Associate Counsel: (on U.S. Supreme Court brief)
Bobby Jay Small
ISTA Building
Indianapolis, Indiana 46204
(317) 232-2560

Opposing Counsel: Perry H. Harrold
Second Floor
Retail Merchants Association
15A East Church Street
Martinsville, Virginia 24112

Also on appeal for defendants:

Sandy L. Bryant
241 East 12th Street, Suite 203
Indianapolis, Indiana 46202
(317) 635-9745

Kenneth C. Kern
107 North Pennsylvania Street
Suite 900
Indianapolis, Indiana 46204
(317) 638-2351

Dates of Litigation: Trial September 20-21, 1979
Appeal decided September 30, 1980
Certiorari denied March 23, 1981
Retrial December 4, 1980

Summary and Significance of the Case:

Harry E. Ferguson was charged with robbery and, because of prior felony convictions, a sentence enhancement was sought under Indiana's habitual offender statute. I was the prosecutor at the trial of this case, at which the defendant was convicted of robbery. Under Indiana law, in addition to deciding the underlying charge, the jury must decide whether the elements of the habitual offender enhancement have been proved beyond a reasonable doubt.

In the Ferguson case, the jury was unable to reach a verdict on the habitual offender sentence enhancement. At about the same time, similar mistrials occurred in two other cases being handled by the Marion County Prosecutor's Office, namely State v. Hubert McMillan and State v. Albert Lee Woods. This problem also occurred in several other counties throughout the state.

In each case, we sought to have sentencing hearings re-set on the habitual offender portions of the trials. Each request was denied. We appealed each case to the Indiana Court of Appeals, where the cases were consolidated and transferred to the Indiana Supreme Court. The Indiana Supreme Court ruled in favor of the state and permitted retrial on the habitual offender sentence enhancement portions of these cases. The defendants sought a writ of certiorari from the United States Supreme Court, which was denied.

The case resolved two important issues: First, whether the state was authorized to appeal the trial courts' rulings; second, whether the protection against double jeopardy permitted a partial retrial in these cases. The state ultimately prevailed on both questions, although the Indiana Supreme Court was not explicit in finding a basis for its appellate jurisdiction.

As the Indiana Supreme Court noted, this was a case of first impression in this state. It resolved issues that were important to prosecutors throughout Indiana.

This case reflects abilities that I have demonstrated at both the trial and appellate levels. I was trial counsel at all of the Ferguson proceedings, and I was primary counsel on the appeals of all three cases and on the opposition to the petition for writ of certiorari.

(8) Name of Case: State of Indiana v. Norman Z. Flick
Cause No.: CR81-295B
Court: Marion County Superior Court, Criminal Division, Room No. 2

Presiding Judge: The Honorable Webster L. Brewer
Room W241 City-County Building
Indianapolis, Indiana 46204
(317) 236-4996

Party Represented: State of Indiana

Co-Counsel: John S. Beeman
777 Chamber of Commerce Building
Indianapolis, Indiana 46204
(317) 639-4511

Opposing Counsel: Ronald S. Lieber
614 Circle Tower Building
Indianapolis, Indiana 46204
(317) 638-6500

Citation of Case: 455 N.E.2d 339 (Ind. 1983)

Dates of Litigation: January 4-5, 1982
Appeal Affirmed November 3, 1983

Summary and Significance of the Case:

This prosecution involved one of the most notorious criminal figures in central Indiana. The case dealt with forgery and official misconduct by a public official. Flick purchased falsified driver's licenses from a license branch supervisor. The licenses ultimately were to be used in fraudulent schemes which resulted in losses of hundreds of thousands of dollars.

The defendant was a fugitive for a significant period of time prior to his capture. He raised numerous issues to avoid going to trial, and the trial itself was hotly contested. Some of the witnesses were uncooperative, and others were accomplices with substantial criminal records. The defendant ultimately was sentenced to thirty-five years imprisonment. This prosecution had a significant impact on the criminal organization which Flick headed.

On appeal, the case established an important precedent in the interpretation of the term "public servant" in the official misconduct statute.

(9) Name of Case: State of Indiana v. Anthony E. Peterson
Cause No.: CR79-003
Court: Hamilton County Circuit Court

Presiding Judge: The Honorable Paul H. Johnson,
Special Judge
155 West Oak Street
Zionsville, Indiana 46077
(317) 873-6266

Party Represented: State of Indiana

Co-Counsel: J. Gregory Garrison
7351 Shadeland Station, Suite 201
Indianapolis, Indiana 46256
(317) 842-8283

Opposing Counsel: David M. Adams
Bruce A. Boje
P.O. Box 248
Noblesville, Indiana 46060
(317) 773-4400

Citation of Case: 448 N.E.2d 673 (Ind. 1983)

Dates of Litigation: June 25-July 13, 1979.

Summary and Significance of the Case:

The defendant was charged with committing a murder during the course of a drug store robbery. This was a death penalty case, one of the first such cases tried in Indiana since the early 1960's. The

trial, including suppression hearings and jury selection, lasted nearly three full weeks.

The most significant issue in the case was the use of hypnosis to refresh the memory of one of the eyewitnesses to the murder. No Indiana case had been decided on the subject and the case law of other jurisdictions was split. The witness had a hazy recollection of the incident and was unable to make an identification. After he was hypnotized, the witness identified Peterson as the murderer. Other evidence also implicated Peterson in the crime.

Ultimately, the Indiana Supreme Court reversed the conviction because of the use of hypnosis, and clearly established a rule of evidence which prohibits the use of post-hypnotic testimony in Indiana courts. Peterson eventually was retried without the posthypnotic evidence, and was again convicted of murder. I was not involved in the second trial.

This case was significant for several reasons. Most importantly, it dealt with a novel issue in Indiana, namely, hypnosis. Some of the nation's leading experts in hypnosis testified at the trial. I was involved in the often complex direct and cross examination of these expert witnesses. A complete record was developed at trial which enabled the Indiana Supreme Court to rule definitively on the issue. While the position I argued at trial did not prevail on appeal, the trial and appellate courts complimented me on the thoroughness of my presentation on the issue at trial. The Attorney General's office used my briefs and arguments in the appellate process.

The trial itself was long and vigorously contested. Other issues, such as the admissibility of expert testimony on the subject of eyewitness identification, conflicting evidence on searches, and an alibi defense also posed major problems.

(10) Name of Case: William J. Prater v. U.S. Parole Commission and Thomas J. Keohane, Warden

Cause No: 84-1121
Court: United States Court of Appeals, Seventh Circuit

Presiding Judge:	Rehearing en banc, Chief Judge Cummings presiding.
Party Represented:	U.S. Parole Commission and Thomas J. Keohane, Warden
Citation of Case:	802 F.2d 948 (7th Cir. 1986)
Co-Counsel:	(on the briefs) Assistant United States Attorney Carolyn Small 46 East Ohio Street Indianapolis, Indiana 46204 (317) 269-6333
Opposing Counsel:	James J. Barrett 182 Washington Street Route 2, Box 23 Stanton, Kentucky, 40380 (606) 663-2844

Date of Litigation: Rehearing en banc, June 9, 1986

Summary and Significance of the Case:

William J. Prater was one of three men who conspired to kill United Mine Workers president Joseph Yablonski in 1969. Prater was also a Mine Workers official whose role in the conspiracy was to transfer union pension funds to the triggerman in payment for the murder. Prater pleaded guilty to the federal crime of conspiring to injure a United States citizen in the exercise of his federal rights, a violation of 18 U.S.C. 241. Prater was given a life sentence under which he would become eligible for parole in ten years.

Prater was incarcerated at the United States Penitentiary at Terre Haute, Indiana, when he became eligible for parole. The Parole Commission denied Prater's initial request for parole because it determined that release would depreciate the severity of his offense.

Prater sought habeas corpus relief in the United States District Court, contending the grounds on which his parole had been denied had been enacted into law after he had committed his crime, thus violating the constitutional provision against ex post facto laws. The government contended that the ex post facto provision was inapplicable because the statute and guidelines in effect at the time of Prater's crime were sufficiently broad to encompass the principle of depreciation of the severity of the offense. For that reason, denial of parole was a possibility which Prater faced when he was sentenced.

The writ was denied by the district court in a decision reported at 575 F.Supp. 284 (S.D. Ind. 1983) Prater appealed, and the Seventh Circuit reversed the district court decision and remanded the case for a hearing in an opinion reported at 764 F.2d 1230 (7th Cir. 1985). The government petitioned for rehearing en banc, which was granted.

Assistant United States Attorney Carolyn Small wrote all of the government's briefs in this case. My role was to present the government's oral argument before the Seventh Circuit at the rehearing en banc.

This case is significant because it establishes an important principle of constitutional law concerning parole guidelines and statutes. From a personal perspective, it demonstrates that I have experience in arguing before the entire panel of Seventh Circuit judges. I have appeared before the Seventh Circuit more than a dozen times and have demonstrated competence when faced with complex factual and legal issues in oral arguments.

19. Legal Activities: Describe the most signficant legal activities you have pursued, including signficant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

ANSWER:

I have taught a course in trial advocacy at the Indiana University School of Law (Indianapolis) each year since 1980. The course is modeled after the National Institute of Trial Advocacy program, combining lectures with performances by students, which are videotaped and critiqued. I have also been an instructor at similar programs for the National Institute of Trial Advocacy and the Indiana Continuing Legal Education Foundation. I have lectured at continuing legal education programs sponsored by the Indianapolis Bar Association, the Indiana Prosecuting Attorneys Council and the Marion County Bar Association. In May 1986, I presented a program to the District Judges Association of the Seventh Federal Circuit on illegal tax protesters.

With respect to other litigation which did not progress to trial, the majority of the cases I handled or supervised resulted in guilty pleas or civil settlements. The subject matters have included large dollar civil damage claims and serious violent and white-collar crime matters. I hesitate to categorize any of these matters as more significant than cases which were actually litigated; however, this aspect of my experience has given me background in the settlement of complex civil and criminal litigation.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Describe all financial arrangements, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.

ANSWER: I have no such arrangements. In my answer to Question No. 5 below, the termination agreement I had with the law firm I was associated with before becoming United States Attorney is described.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

ANSWER: I will recuse myself from presiding over any matter that would pose a conflict of interest or would give the appearance of a conflict. This includes any matter in which the United States of America is plaintiff or defendant which arose in the Southern District of Indiana before or during my tenure as United States Attorney, matters I handled prior to that in the private practice of law, and matters in which I or a member of my family have a significant financial interest. The standards of 28 U.S.C. 455 and the Code of Judicial Conduct provide guidance in these matters, but I may recuse myself in some instances to avoid the appearance of impropriety even if the statute and code do not mandate recusal.

My father, my wife, and two of my first-cousins practice law in the Southern District of Indiana. I will recuse myself from any matters in which these relatives are involved as attorneys or in which they have an interest which could be substantially affected by the outcome of the proceedings. Finally, I will recuse myself from all cases handled by the firm of Harrison & Moberly which arose before or during the time I was an associate there.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service on the court? If so, explain.

ANSWER: If it is permissible for me to continue as an adjunct professor at the Indiana University School of Law, I would like to do so. I am scheduled to teach in the fall semester of 1987, but I have no long-term commitment from the law school in that regard, nor has one been requested at this time.

4. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

ANSWER: No.

5. If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?

ANSWER: I entered a termination agreement with the law firm where I was associated, Harrison & Moberly, when I left the private practice of law to become United States Attorney in May, 1984. The agreement required the firm to pay me certain portions of the fees upon collection for work I performed before resigning. The final payment under the agreement was made in 1986, and the agreement has been fulfilled. The agreement did not provide for any continuing relationship with the firm or its clients, and it did not provide for future employment.

6. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

ASSETS

Cash on hand and in banks (including IRAs) $123,900

Real Estate:

5254 North Delaware Street Indianapolis, In. $ 92,500

201 West Brook Raleigh, N. C. $102,900

Autos and other personal property $ 49,000.

Cash Value-Life Insurance and annuity $ 12,000.

Blind Trust $ 46,000.

TOTAL ASSETS $426,300

CONTINGENT LIABILITIES

None

LIABILITIES

Real Estate Mortgages:

Railroadmen's Savings & Loan - secured by residence at 5254 North Delaware Street, Indianapolis, In. $47,000.

First Home Federal - secured by rental property, 201 West Brook, Raleigh, N.C. $78,300.

Total Liabilities $125,300.

Net Worth $301,000.

Total Liabilities and net worth $426,300.

GENERAL INFORMATION

Are any assets pledged? No.

Are you defendant in any suits or legal actions? No.

Have you ever taken bankruptcy? No.

III. GENERAL (PUBLIC)

1. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

ANSWER:

A court must avoid interposing its personal will or policy preferences in adjudicating disputes; to do so would warrant criticism as being improperly activist. A judicial decree may cause policy changes, but only if the issue arises in a lawsuit within the jurisdiction of the court, and if the policy changes flow from the application of the Constitution or the laws to the facts and issues of that case.

Judicial decisions have played a significant role in the political history of our country. Consequently, at first blush it may seem peculiar to consider the judicial branch as having a limited and indirect role in establishing and affecting policy. However, our balanced system of constitutional government mandates just such a role for the judiciary.

The United States Constitution established a uniquely complementary scheme in the three co-equal branches of government. The legislative and executive branches are empowered to create and effectuate our national policies. The authority of the courts extends to all cases and controversies described in Article III which must be resolved in accordance with the Constitution and laws validly enacted under the authority of the Constitution. The role of the federal judiciary begins only when the rights of litigants properly before the court (in a jurisdictional sense) conflict with each other, or with the laws or actions of the political branches of government.

2. What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.

ANSWER: As a public defender in state and federal courts, I have vigorously advocated my clients' interest in equal and fair treatment. As a prosecutor in both systems, I have vigorously advocated for fair and equal application of the law to criminal defendants, and have sought to have courts recognize the rights of victims of crime.

With respect to pro bono legal representation for the disadvantaged, I have served on a panel of attorneys, sponsored by the Indianapolis Bar Association, who provide free legal services to the indigent. Likewise, in the private practice of law, I frequently provided free or reduced-rate legal services for the indigent outside of a formal program. I also have been a member of the Indianapolis Legal Aid Society for several years. This privately funded organization provides free legal services to the poor.

AFFIDAVIT

I, John Daniel Tinder, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6/8/87
(Date)

JOHN DANIEL TINDER
(Name)

DEIRDRE E. ENDSLEY
(Notary)

My Commission Expires: May 3,1988

My County of Residence: Marion

SUPPLEMENT TO QUESTIONNAIRE FOR
JUDICIAL NOMINEES

SUBMITTED BY JOHN D. TINDER

SECTION III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence of professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

ANSWER: As a public defender in state and federal courts, I have vigorously advocated my clients' interest in equal and fair treatment. As a prosecutor in both systems, I have vigorously advocated for fair and equal application of the law to criminal defendants, and have sought to have courts recognize the rights of victims of crime.

With respect to pro bono legal representation for the disadvantaged, I have served on a panel of attorneys, sponsored by the Indianapolis Bar Association, who provide free legal services to the indigent. Likewise, in the private practice of law, I frequently provided free or reduced-rate legal services for the indigent outside of a formal program. I also have been a member of the Indianapolis Legal Aid Society for several years. This privately funded organization provides free legal services to the poor.

As United States attorney, no appropriate method of providing legal services to the disadvantaged is available to me. Consequently, for the last several years, I have been working approximately one Sunday a month in a soup kitchen which feeds the poor. The program is staffed by a group of Catholic volunteers, and is called the Cathedral Kitchen. I also serve on the Executive Committee of this organization. I spend approximately four hours per month on this program.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

ANSWER: I am not a member of any club that restricts membership, although I was a member of a college social fraternity, Beta Theta Pi. On a national basis, this fraternity admits males only. An informal but active alumni association of this fraternity operates in Indianapolis. No membership requirements, other than college affiliation with the fraternity, are established, and I do not believe that a membership list is maintained, but I would be considered a member. Since affiliation arises from fraternity membership at the college level, the association consists only of males. I attend an annual dinner and occasional luncheons sponsored by this association.

I previously belonged for brief periods to two clubs which, while having no formal membership requirements of a discriminatory nature, have informal practices which I believe result in all male memberships. I no longer belong

to either organization, as explained below.

In 1984, I was nominated to membership in a luncheon club called the University Club of Indianapolis. Under club practices, no application for membership is permitted. Members are chosen upon the nomination of existing members, and I did accept membership when notified of my selection. I inquired about membership practices, and was told that no women had ever been nominated for membership, but that no formal prohibition existed. I discussed the prospect of nominating women for membership with various members and officers of the club. I became convinced of the futility of such an effort and resigned from this organization in 1986.

With respect to the other organization, a group of attorneys called the Indianapolis Lawyers Club, membership is also selected without application upon nomination by existing members. This organization has four social dinners each year. I was selected for membership in 1986. Again, I was told that no formal policy of discrimination with respect to membership existed, but that no women had ever been nominated.

After discussing the subject with a number of members, I nominated U.S. District Judge Sarah Barker for membership. The nomination was cosponsored by one of the other federal judges, the Honorable S. Hugh Dillin. The nomination was defeated in April of 1987. I resigned the day following the vote.

3. (Judicial Nominee Only) Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

ANSWER: Senators Lugar and Quayle have utilized a Merit Selection Commission for judicial and U.S. Attorney nominations since 1981. The commission consists of nine citizens, three selected by each Senator and one by the Governor, who are joined by the Chief Justice of the Indiana Supreme Court and the President of the Indiana State Bar Association.

Media reports indicated that over thirty individuals submitted applications for the two judgeships available in the Southern District of Indiana. It is the practice of the commission to recommend several nominations for each vacancy. In this instance, I was one of five people who were favorably recommended by the commission for these judgeships.

The selection process began with the submission of a written application which consisted of responses to questions much like those found in the American Bar Association form and in this questionnaire. The commission then reviewed the applications, and it was my impression that it conducted some informal investigation with respect to the experience and reputation of the applicants by checking with some of the references, judges and attorneys listed in the applications.

The commission chose to interview ten of the applicants. Each of the interviews was conducted by the entire commission, meeting as a whole. My interview consisted of questions about my background and experience, and some general topics regarding judicial administration. Following the interviews, five people were recommended for these judgeships.

Each of these five remaining candidates were inter-

viewed at the Department of Justice. I interviewed separately with five lawyers at the Department. The subjects addressed in the interviews were much the same as discussed in the merit selection process. In some of these interviews, we also discussed some constitutional law subjects with respect to whether I was able to recognize and analyze issues. I was not asked to reach conclusions on specific cases, issues or questions.

After the Department of Justice interviews, an FBI investigation was conducted of my background. I was interviewed by an FBI agent who asked a variety of questions about my personal employment history and about my family. I also completed a detailed form which requested similar information and references.

I also completed a questionnaire for the American Bar Association Standing Committee on the Federal Judiciary. Several months later, I was interviewed by a member of that committee. This interview again focused on my background and experience. We also discussed general aspects of judicial administration. Following completion of the ABA process, I was nominated.

4. (Judicial Nominees Only) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue of question? If so, please explain fully.

ANSWER: No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

ANSWER: A court must avoid interposing its personal will or policy preferences in adjudicating disputes; to do so would warrant criticism as being improperly activist. A judicial decree may cause policy changes, but only if the issue arises in a lawsuit within the jurisdiction of the court, and if the policy changes flow from the application of the Constitution or the laws to the facts and issues of that case.

Judicial decisions have played a significant role in the political history of our country. Consequently, at first blush it may seem peculiar to consider the judicial branch as having a limited and indirect role in establishing and affecting policy. However, our balanced system of constitutional government mandates just such a role for the judiciary.

The United States Constitution established a uniquely complementary scheme in the three co-equal branches of government. The legislative and executive branches are empowered to create and effectuate our national policies. The authority of the courts extends to all cases and controversies described in Article III which must be resolved in accordance with the Constitution and laws validly enacted under the authority of the Constitution. The role of the federal judiciary begins only when the rights of litigants properly before the court (in a jurisdictional sense) conflict with each other, or with the laws or actions of the political branches of government.

AFFIDAVIT

I, John Daniel Tinder, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 10, 1987

JOHN DANIEL TINDER

NOTARY

My Commission Expires March 14, 1989.

AMERICAN BAR ASSOCIATION

Standing Committee on
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750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

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and Member at Large
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Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

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Jerome L. Shestack
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Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Hazard, Jr.
1410 First Virginia Bank Tower
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Norfolk, VA 23510

FIFTH CIRCUIT
Carey W. Ichiki
One Shell Square
30th Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
One First Plaza
Suite 4100
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hansell
P.O. Box 80268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland MacKenzie, Jr.
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Montgomery, AL 36104

DISTRICT OF COLUMBIA
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June 3, 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: JOHN D. TINDER
United States District Court
for the Southern District of Indiana

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of John D. Tinder for appointment as Judge of the United States District Court for the Southern District of Indiana.

Our Committee is unanimously of the opinion that Mr. Tinder is "Qualified" for this appointment.

Sincerely,

Robert B. Fiske, Jr.

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

JUDICIARY COMMITTEE

ANSWERS TO

QUESTIONNAIRE FOR JUDICIAL NOMINEES

Furnished by Charles R. Wolle, Des Moines, Iowa

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Charles Robert Wolle

2. Address: List current place of residence and address(es).

Residence: 2727 Glenwood Drive
Des Moines, Iowa 50321
(515) 281-5174

Office: Iowa Supreme Court
State Capitol
Des Moines, Iowa 50319
(515) 281-5174

3. Date and place of birth.

October 16, 1935 - Sioux City, Iowa

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married since June 26, 1961 to Kerstin Birgitta Wennerstrom. Since January 7, 1986 my wife has been employed as an RN in an auditing position by Blue Cross-Blue Shield of Iowa, 636 Grand Avenue, Des Moines, Iowa 50309.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Harvard College, Cambridge, Massachusetts, September 1954 to July 1958 - A.B. (Bachelor of Arts)
Iowa University College of Law, Iowa City, Iowa, September 1958 to May 1961 - J.D. (Juris Doctor)

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Associate, Shull, Marshall, Mayne, Marks & Vizintos,

1109 Badgerow Building, Sioux City, Iowa, from August 1, 1961 to December 31, 1968
Partner, Shull, Marshall, & Marks, 1109 Badgerow Building, Sioux City, Iowa, from January 1, 1969 to December 31, 1980

7. Military Service. Have you had any military service? If so, give particulars, including the dates, branch of of service, rank or rate, serial number and type of discharge received.

June 1961 to June 1967 - United States Army Reserve
Serial Number ER17528423
Enlisted man - attained rank of Sergeant E-5
Honorably discharged - June 1967

8. Honors and Awards. List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Selected as Notes Editor, Iowa Law Review, 1960-61

Received Juris Doctor Degree "with distinction," Iowa University College of Law, June 1961

Elected to admission as a Fellow, American College of Trial Lawyers, August 1979

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Woodbury County Bar Association - member 1961-1985
Chairman of Courts Committee - 1976-1979
Polk County Bar Association - member from 1986 to date
Iowa State Bar Association - member since 1961
Young Lawyers Committee - elected member of board 1963-1964
American Bar Association - member since 1961
American College of Trial Lawyers - elected to admission as a Fellow in August, 1979

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong (such as civic, educational "public interest" law, etc.).

Iowa Judges Association - seeks to improve the administration of justice in Iowa
Des Moines Art Center
Des Moines Symphony Orchestra Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the

same information for administrative bodies which require special admission to practice.

Iowa Supreme Court and all Iowa State Courts - 1961
United States District Courts for Northern and Southern Districts of Iowa - 1961
United States Court of Appeals for the Eighth Circuit - 1963
United States Tax Court - 1964
I have also been admitted to the United States District Courts in Nebraska and South Dakota for the purpose of trying individual cases on several occasions.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written. Please supply a copy of any significant speech by you on constitutional law or national policy. If there were press reports about the speech, and they are readily available to you, please supply them.

My published writings consist of published court opinions and two law review articles written when I was a second year law student: a case comment on jury misconduct, 45 Iowa L. Rev. 649 (1960); and a note entitled "County Zoning in Iowa," 45 Iowa L. Rev. 743 (1960).

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent - May 21, 1987

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have served as a Justice of the Iowa Supreme Court since March 20, 1983. From January 2, 1981 to March 19, 1983, I served as a judge of the Iowa District Court for the Third Judicial District.

For both judicial positions, I first was nominated by a commission consisting of laypersons, lawyers, and a senior judge or justice, and then was appointed to the position by the Governor of Iowa. As district court judge I had general jurisdiction over all civil and criminal proceedings. The Iowa Supreme Court has appellate jurisdiction only.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on

federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

(1) Israel v. Farmers Mut. Ins. Ass'n, 339 N.W.2d 143 (Iowa 1983)

Rozevink v. Faris, 342 N.W.2d 845 (Iowa 1983)

State v. Peterson, 347 N.W.2d 398 (Iowa 1984)

State ex rel. Shanahan v. Iowa Dist. Court, 356 N.W.2d 523 (Iowa 1984)

Glidden v. German, 360 N.W.2d 716 (Iowa 1984)

State v. Flynn, 360 N.W.2d 762 (Iowa 1985)

Brown v. Garman, 364 N.W.2d 566 (Iowa 1985)

Clemens Graf Droste zu Vischering v. Kading, 368 N.W.2d 702 (Iowa 1985)

Iowa Planners Network v. Iowa State Commerce Comm'n, 373 N.W.2d 106 (Iowa 1985)

South Central Iowa PCA v. Scanlan, 380 N.W.2d 699 (Iowa 1986)

(2) In State v. Dean, 332 N.W.2d 336 (Iowa 1983), a five-judge panel of the Iowa Supreme Court reversed the defendant's conviction of second-degree robbery on the ground that the prosecution was allowed to use deposition testimony when a witness was not available. As the trial judge I had overruled an objection to use of the evidence on the ground that the defendant had the opportunity to cross-examine the witness.

In Midwest Paving Co. v. Town of Lawton, the Iowa Court of Appeals (with one judge dissenting) affirmed in part and reversed in part a decision in which I held a contractor could recover part of the value of paving a city street. The amount recovered was reduced from $7500 to $3000.

In Stockmen's Inc. v. Erwin Weller Co., the Iowa Court of Appeals reversed a jury verdict in an implied warranty case involving allegedly defective products causing loss of profits, holding no jury question on breach of warranty had been established.

In Chesher v. Chesher, the Iowa Court of Appeals reversed a child custody determination I had entered in a dissolution decree. I had granted the parents joint custody, but the husband on appeal was granted sole custody.

In Estate of Bruene, the Iowa Court of Appeals affirmed in part and reversed in part a decree I entered closing a probate estate. The court held I should have awarded more attorney fees to the estate's attorneys.

(3) In Ayers v. Des Moines Register and Tribune Co., 9 Med. L. Rptr. 1401 (March 15, 1983), a bench trial in Woodbury County, Iowa, I held that the defendant newspaper publishing company had a right under the First Amendment of the United States Constitution to publish an article concerning alleged drug abuse by a Sioux City physician.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Associate, Shull, Marshall, Mayne, Marks & Vizintos, 1109 Badgerow Building, Sioux City, Iowa, from August 1, 1961 to December 31, 1968
Partner, Shull, Marshall & Marks, 1109 Badgerow Building Sioux City, Iowa, from January 1, 1969 to December 31, 1980

b. 1. What has been the general character of your law practice dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Mine was a general practice from 1961 to 1980, with specializations in trial practice and labor law. The general practice included handling of probate and

income tax matters, advising corporations and individuals on a regular basis, and estate planning. The trial practice included the trial of many jury and non-jury cases in state district courts in many Iowa counties and United States District Courts in Sioux City, Sioux Falls, Omaha, Fort Dodge, Cedar Rapids and Des Moines. I also represented clients in many hearings before various administrative agencies, including the NLRB, OSHA Commission, Packers and Stockyards Administration, and Social Security Administration. The wide variety of types of cases I handled, for both plaintiffs and defendants, included those involving personal injury claims, commercial law, dissolution and child custody issues, patent and anti-trust claims, libel actions, and requests for injunctive and other types of equitable relief to resolve disputes in the business-labor sector. The labor law practice included active participation in labor negotiations for public and private employers and representation of clients in numerous arbitration hearings and trials involving labor issues.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court frequently.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

I appeared in federal courts about twenty-five percent of my time in court, and state courts of record about seventy-five percent of the time.

3. What percentage of these appearances was in:
   (a) civil;
   (b) criminal.

My litigation experience was ninety-eight percent civil and two percent criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

During the twenty years I was in private practice, I tried to verdict or judgment approximately two hundred cases, being sole counsel in about fifty percent, chief counsel in about thirty percent, and associate counsel in about

twenty percent. I served as associate counsel primarily in the first eight years of practice.

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

About thirty-five percent were jury cases and about sixty-five percent were non-jury cases.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of the representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Breuer v. Mataloni, 133 N.W.2d 114 (Iowa 1965). My client was the defendant on whose snow-covered sidewalk the plaintiff fell and broke her hip. Trial in an Iowa district court in Sibley before Judge J. P. Kelley resulted in a jury verdict for the plaintiff. I personally handled the appeal to the Iowa Supreme Court which resulted in reversal and judgment for my client. The attorney for the plaintiff was Frank E. Kennedy, 706 8th Avenue, Sibley, IA 51249 (712-754-3318). This was the first case I alone handled on appeal, and its holding concerning non-liability of abutting owners of snow-covered sidewalks was significant.

2. Coon v. United States, 360 F.2d 550 (8th Cir. 1966). My client was convicted of four federal offenses in connection with the robbery, assault, kidnapping, and larceny of a bank in Correctionville, Iowa in 1958. Another lawyer represented him in his jury trial, but I was appointed to represent him in his appeal to the Court of Appeals for the Eighth Circuit. I personally prepared the briefs and orally argued the case before a Court of Appeals panel. I also filed a petition for writ of certiorari with the United States Supreme Court, but the petition was denied. This appeal presented several issues on which there was little precedent. The Assistant United States Attorney who represented the prosecution, now an Iowa judge, was Richard J. Vipond, Denison, IA 51442 (712-263-2805).

3. Bengford v. Carlem Corp., 156 N.W.2d 855 (Iowa 1968). At the request of the insurer of the defendants Carlem and Ford Motor Co., my partner John Vizintos (since deceased) and I tried to a Sac County jury the personal injury claim of a nine-year-old child whose right leg was severed in an auger wagon. His father brought this action against the farm employer and manufacturer of the tractor involved. A week-long jury trial, involving several novel products-liability theories, resulted in a verdict for plaintiff which was appealed to the Iowa Supreme Court. I personally prepared the briefs and presented oral argument to the Iowa Supreme Court. The trial court judge was R. K. Brannon, since deceased. The attorneys for the plaintiff were Thomas L. McCullough, 701 W. Main Street, Sac City, IA 50583 (712-662-4751) and Daniel Williamson, 2nd & Main Street, Ida Grove, IA 51445 (712-364-3376).

4. Schopp v. Schopp, bench trial in Sioux City in about 1970. My client Edward Schopp, a single man farming near Sioux City, fathered two children while spending his winters in Mexico. He brought the children to live with him in Iowa where they were enrolled in elementary school. In about 1968 the single mother of the children brought a habeas corpus action in the Iowa district court in Sioux City against the father seeking to obtain custody of the children and return them to Mexico. The case was tried for three days before Judge Donald M. Pendleton, since retired and residing at 3506 Court Street, Sioux City, IA 51104 (712-258-5415). The district court awarded my client custody of the children. The case involved use of an interpreter because the mother did not speak English. Letters written in Spanish by the mother were used effectively to impeach her testimony. The attorneys for the mother, Lowell Kindig and an Omaha lawyer named Mecham, are no longer listed in legal directories.

5. Hankins v. Derby, 211 N.W.2d 581 (Iowa 1973). My client Leo Derby and another defendant named Boyle, represented by Marvin Heidman, 200 Home Federal Bldg., Sioux City, IA 51101 (712-255-8838), were defendants in two personal injury actions brought by members of the Hankins family, represented by Paul W. Deck, 635 Frances Bldg., Sioux City, IA 51101 (712-255-3573). The defendants, driving automobiles on a bridge, were involved in a chain collision. The Hankins vehicle was struck from behind, injuring Bonnie Hankins and her son. A two-week jury trial before Judge D. M. Pendleton resulted in a small personal injury judgment for the mother. Thereafter her husband brought this action on behalf of their son seeking damages for personal injuries and loss of consortium. The trial court, Judge C. F. Stilwill of Sioux City, sustained motions to strike many of the lawsuit claims, and the Iowa Supreme Court affirmed. I personally handled the jury trial of the first case and the pretrial motions and appeal in the second case. In this case the Iowa Supreme Court rejected the plaintiffs' theory

that a child should be allowed to recover for loss of services of a parent. The Hankins holding was overruled on that significant issue in a later decision of the Iowa Supreme Court.

6. Criss v. Winger-Boss Co., jury trial in 1975 in United States District Court, Omaha, Nebraska. My client was a young man whose arm had been severed in an industrial accident at the IBP plant in Dakota City, Nebraska. A four-day jury trial, with Judge Robert Denny presiding, ended with a verdict for my client in the sum of $174,000 against the manufacturer of the product claimed to be defective, a cog wheel. We used motion pictures to describe both the product and my client's injury. No settlement offer had been made to my client before the jury returned its verdict, but no appeal was taken by the defendant and the judgment was paid in full. I had primary responsibility for preparing and presenting the case to the jury. My Nebraska associate counsel was Tom Monaghan, 2120 S. 72d Street, Omaha, Nebraska (402-397-5757). The attorney for the worker's compensation carrier was Kevin Colleran, Suite 1900 First National Bank Bldg., Lincoln, Nebraska 68508 (402-474-6900). The defendant and its insurer were represented by Keith Howard, now a district judge in Omaha.

7. Bartlett & Company Grain v. Board of Review, 253 N.W.2d 86 (Iowa 1977). My clients were three terminal grain elevator companies for whom we protested real estate tax assessments for the years 1970-72. Judge J. P. Kelley reduced the assessments by about 20% following a three-day bench trial, but we appealed and the Iowa Supreme Court reduced the assessments to the much lower values established by our clients' expert witnesses. I was primarily responsible for the handling of the trial and appeal, working with my partner D. Carlton Shull. The defendant board was represented by attorney Patrick Birmingham, now practicing at 102 West Main Street, Bloomfield, Nebraska 68718 (402-373-4747), and David E. Vohs, 340 Insurance Center, Sioux City, Iowa 51105 (712-277-1434). The opinion of the Iowa Supreme Court established the precedent that expert valuation witnesses may rely on comparable sales of properties located far distant from the taxing district.

8. Ferris v. Anderson, 255 N.W.2d 135 (Iowa 1977). My clients were defendants in a personal injury lawsuit arising from a rear-end collision. A two-week jury trial before Judge L. F. McCormick of Sioux City, since retired, resulted in a verdict for much less than had been offered by our clients in settlement. Four medical doctors, including two psychiatrists, testified concerning the cause of the plaintiffs' disabling injuries. The trial court judgment was affirmed on appeal. My partner James Cosgrove, 1109 Badgerow Bldg., Sioux City, Iowa 51102 (712-255-4444) was

co-counsel. Plaintiffs were represented by Paul W. Deck, 635 Frances Bldg., Sioux City, Iowa 51101 (712-255-3573). The trial involved vigorously-disputed medical testimony, and the appeal presented a significant issue involving an insurer's entitlement to credit for advanced payments.

9. Du Pont v. Berkley & Co., 620 F.2d 1247 (8th Cir. 1980). I served as trial counsel with a New York patent law firm in representing Du Pont in complex litigation involving patent claims and anti-trust counterclaims arising from a patent on "Stren" nylon fishing line. After extensive preparation for trial, including the taking of some forty "coast-to-coast" depositions, the case was presented to an eight-person jury in U.S. District Court in Cedar Rapids, with Judge Edward J. McManus presiding. Trial from November 6 to November 27, 1978, resulted in a verdict denying all claims. Both parties appealed, and on February 13, 1980 the Court of Appeals issued its twenty-nine page decision affirming the verdict favorable to Du Pont but reversing and remanding for a new trial on Du Pont's patent claims. The case was significant to my client, justifying its substantial investment in its patent, and the case gave me valuable experience and insight concerning complex federal litigation. Many of the 72 headnotes in the reported decision of the Court of Appeals represent significant refinement of the laws governing patent and anti-trust fraud claims. I worked closely with Robert Morgan and John Tramontine of Fish & Neave, 875 Third Avenue, New York, NY 10022 (212-715-0600), my co-counsel. Attorneys representing Berkley & Co. included William J. Rawlings, 300 Toy National Bank Bldg., Sioux City, Iowa 51101 (712-277-2373), and Orrin M. Haugen, 820 International Centre, Minneapolis, MN 55402 (612-339-7461).

10. Western Iowa Farms Co. v. U.S., 629 F.2d 502 (8th Cir. 1980). My client United Stockyards Company in 1977 promulgated rules governing the market agencies doing business at its Sioux City Stockyards. The U.S. Department of Agriculture approved the rules, and in this case the United States Court of Appeals eventually upheld the rules in a two-to-one decision (Judge Ross writing the opinion for the court, Chief Judge Lay dissenting). The case was vigorously tried before an Administrative Law Judge, then briefed before the Secretary of Agriculture who rejected the proposed decision. A ruling of the Secretary favorable to my client was affirmed by the Court of Appeals decision. I personally advised my client throughout the lengthy administrative proceedings, handling the case before the ALJ, the Secretary, and the Court of Appeals where my client intervened as the Respondent. Judith Wenker of the office of the USDA general counsel worked with me on the appeal, while the petitioners were represented by Victor J. Lich, Jr., 10050 Regency Circle, Omaha, NE 68114 (402-397-1250), and Craig Raby, P.O. Box 27, Sioux City, IA 51102 (712-277-4561). The case vindicated my client's rules

designed to make its business competitive, and the Court of Appeals decision addressed an important and novel question concerning trade regulation in the stockyards industry.

19. Legal Activities: Describe the most significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I was principal counsel for Sioux Honey Association, a cooperative association, and the Sioux City Stockyards during the years 1962 through 1980, when I left private practice. In that capacity, I handled labor negotiation, commercial litigation, corporate business affairs, and consulted with the officers and directors of the companies.

For many clients I negotiated significant settlements either before suit or before trial commenced. These clients included: a Sioux City bank that settled a blanket bond claim for about $600,000 in 1978; an Indiana couple who received over $400,000 for a personal injury claim in 1977; and several clients who were medical professionals and obtained favorable settlements of malpractice claims.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Describe all financial arrangements, stock options, deferred compensation, agreements, future benefits, and other continuing relationships with business associates, clients or customers.

None

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

None

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

4. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No

5. If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?

I have no financial interest in my former law firm.

6. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

Statement is attached.

III. GENERAL (PUBLIC)

1. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon the governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

(a) Mark me as a judge who believes our system of justice functions most effectively when it fairly disposes of actual controversies between litigants. In most instances the parties quickly discover the facts on disputed issues, learn what risks trial entails, and achieve a fair settlement. Other parties exercise their right to a fair

trial, disposition by verdict or bench decision, and appeal in rare instances. The judiciary should ever focus on improving the quality of justice dispensed in these traditional methods.

(b) When a trial court upon careful analysis of pertinent factors, has certified a class and allowed a class action to proceed, the plaintiff's action will have significant broader impact than in the ordinary action. Judges should not be the triggering or moving force behind class actions and should carefully monitor and control all class actions.

(c) Judges should constantly be mindful that two other branches of government are responsible for enacting and enforcing laws of general application. The judiciary's role is to provide a forum and means of resolving disputes fairly, efficiently, and with finality.

(d) Such jurisdictional requirements as standing and ripeness play an important role in assuring litigants and the public that courts will only decide cases fully subjected to adversarial processes. Our common-law system of justice presupposes that courts will decide only actual controversies between parties with genuine interests at stake.

(e) The judiciary must cooperate with the other branches of government, including administrative agencies, to expedite dispute resolution. The judiciary ought not impose itself upon other institutions as a caretaker or administrator, nor make inroads into the appropriate constitutional and statutory roles of other branches of government. The judiciary will best serve the public and individual citizens by fulfilling its own responsibilities, not by attempting to usurp the roles and responsibilities of others.

2. What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.

As a practicing lawyer I represented without fee several criminal defendants who were indigents. I provided pro bono legal advice to some persons and charitable organizations, including an institution operated by the United Methodist Church of Iowa. On one occasion in the early 1970's I met with the Tribal Counsel of the Winnebago Indian Tribe of Nebraska and commenced an action in federal court, pro bono, on a few hours notice to toll the running of a statute of limitations. As a justice of the Iowa Supreme Court I have encouraged efforts of Legal Services Corp. of Iowa and the Iowa State Bar Association to extend their delivery of legal services to the disadvantaged.

Charles A., Meriam M., and Aaron C. Hoyle

FINANCIAL STATEMENT

NET WORTH

July 1987

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	10,000	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	
Listed securities—add schedule	80,000	Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due Credit Card	1,000
Due from relatives and friends	3,000	Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful personal residence only		Real estate mortgages payable—add schedule personal residence only	86,000
Real estate owned—add schedule	150,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—Itemize:	
Autos and other personal property	70,000	Loans on 4 Life Insurance Policies	25,000
Cash value—life insurance	25,000		
Other assets—Itemize:			
ough Plan Equitable Life Ins. Co.	135,000		
Tax Deferred Plan - Equivest	21,000		
Kerstin IRA Merrill Lynch	10,000	Total liabilities	112,000
Charles IRA Merrill Lynch	12,000	Net worth	404,000
Total assets	516,000	Total liabilities and net worth	516,000

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	No	Are any assets pledged? (Add schedule.)	No
On leases or contracts	No	Are you defendant in any suits or legal actions?	No
Legal Claims	No	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	No		
Other special debt	No		

LISTED SECURITIES

Charles, Kerstin, and Aaron C. Wolle

July 1987

Charles Wolle

110 Nodaway Valley Common

550 ML Ready Asset Trust

590 Federal Govt. Sec.

Kerstin Wolle

100 America West Airlines Common

100 Jiffy Lub. Inc. Common

Aaron Wolle

18 ADM Common

50 Heritage Common

100 Zayre Common

994 Federal Govt. Sec.

521 ML Intl. Holding Fund

605 ML Nat. Resource Fund

61 ML Ready Asset Trust

600 ML Basic Value Fund

177 Adams Express

88 Public Svc. EG

68 NW Pub. Svc.

100 LM Ericsson - Series B. Shares

132 Kinder-Care Common

110 American Western Corp. Common

150 IBM Common

NB - ML = Merrill Lynch

Number = Shares
(fractions omitted)

ANSWERS TO

SUPPLEMENTAL QUESTIONS FOR JUDICIAL NOMINEES

Furnished by Charles R. Wolle, Des Moines, Iowa

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon II of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a practicing lawyer I represented without fee several criminal defendants who were indigents, including Leroy Pelkey and Darwin Coon charged and tried in the federal court at Sioux City. I provided pro bono legal advice to some persons and charitable organizations, including an institution named Schesler Hall, operated by the United Methodist Church of Iowa. On one occasion in the early 1970's I met with the Tribal Counsel of the Winnebago Indian Tribe of Nebraska and commenced an action in federal court, pro bono, on a few hours notice to toll the running of a statute of limitations. I estimate that I spent approximately fifty hours each year on this type of work.

As a justice of the Iowa Supreme Court I have actively encouraged efforts of Legal Services Corp. of Iowa and the Iowa State Bar Association to extend their delivery of legal services to the disadvantaged, meeting on numerous occasions with representatives of those groups in the last twelve months. I estimate the time spent on these recent projects at forty hours.

2. The American Bar Association's commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that individuously discriminates on the basis of race, sex or religion. Do you currently belong, or have you belonged to any organization which discriminates through either formal membership requirements or the practical implementation of membership policies? If so, list with dates of membership and what have you done to try to change these policies?

In approximately 1970, I was a member for one year of a Sioux City, Iowa local chapter of Lions Clubs International. I believe women were not invited to join that club, and no women were members. As program chairperson for one month I did invite several women to present programs. Two women accepted my invitations and presented programs following the noon luncheons.

3. Is there a selection commission in your jurisdiction to recommend candidates for nominations to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process from beginning to end including the circumstances which led to your nomination and interviews which you have participated.

There is no selection commission for the position I seek, United States District Judge for the Southern District of Iowa.

The vacancy was created when Chief Judge William C. Stuart announced in 1985 that he intended to take Senior Judge status.

In November of 1986 I told several persons, including Senator Charles Grassley, that I was very interested in the position. In January of 1986 Senator Grassley interviewed me in his office. In March Wythe Willey, Senator Grassley's administrative assistant in Cedar Rapids, also interviewed me for about one hour. Within two weeks I was advised that I was one of three persons whose names had been forwarded to the United States Justice Department.

On March 25, 1987 I had four scheduled interviews with persons in the Office of Legal Policy at the United States Department of Justice in Washington. Steve Matthews, Seth Liebman, James Knapp and Steve Markman each interviewed me for about forty-five minutes on a wide range of matters from my background, experience, and personal interests and hobbies, to ideas concerning the role of a federal judge in today's society.

In April I was notified that I would be investigated by the FBI and the ABA. First, FBI Special Agents Barrett Root and Dave Coppinger interviewed me for several hours. Thereafter a member of the Standing Committee on Federal Judiciary of the American Bar Association, James W. Hewitt of Lincoln, Nebraska, interviewed me at length on May 30, 1987.

I was then nominated by President Reagan on July 1, 1987, receiving a phone call from The White House in which the President gave me the good news.

My experiences in these interviews have been entirely positive.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as seeking any expressed or implied assurances concerning your position on such case, issue, or question?

No

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AMERICAN BAR ASSOCIATION

Standing Committee on
Federal Judiciary
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

CHAIRMAN
and Member at Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

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Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harrold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Gene W. Lafitte
One Shell Square
50th Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
One IBM Plaza
Suite 4900
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hansen
P.O. Box 80268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andersen
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Winter Bldg.
2 Dexter Avenue
P.O. Box 78
Montgomery, AL 36104

DISTRICT OF COLUMBIA
CIRCUIT & FEDERAL
CIRCUIT
James J. Sterbcower
International Square
Suite 1275
1875 Eye Street, N.W.
Washington, DC 20006

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Chicago, IL 60611
312/988-5701

July 6, 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: CHARLES R. WOLLE
United States District Court
Southern District of Iowa

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Charles R. Wolle for appointment as Judge of the United States District Court for the Southern District District of Iowa.

Our Committee is unanimously of the opinion that Judge Wolle is "Well Qualified" for this appointment.

Sincerely,

Robert B. Fiske, Jr.

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

(1) **Full name (include any former names used).**

Thomas Selby Ellis, III (Tim)

(2) **Address. List current place of residence and office address(es).**

Home: 4267 Cheyenne Road
Richmond, Virginia 23235

Office: Hunton & Williams
707 East Main Street
Post Office Box 1535
Richmond, Virginia 23212

(3) **Date and place of birth.**

May 15, 1940
Bogota, Colombia, South America

Born to U.S. citizens and registered at the U.S. Embassy.

(4) **Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).**

Martha Anne Reed Ellis
Homemaker and volunteer

(5) **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

1957-61: Princeton University
B.S.E. (Aeronautical Engineering)
NROTC Scholarship student

1966-69: Harvard Law School
J.D. magna cum laude
Awarded Knox Fellowship for study at Oxford University

1969-70: Magdalen College, Oxford University
Diploma in Law

(6) Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1969-present:	Partner since 1976 Hunton & Williams Richmond, Virginia
1985-present:	Vice President and Member, Board of Directors Treasurer 1986-87 Princeton Association of Virginia Richmond, Virginia
1984-present:	Member, Advisory Council to Dept. of Astrophysics Princeton University Princeton, New Jersey
1984-present:	Member, Board of Directors Virginia Poverty Law Center Richmond, Virginia
1982-present:	Member, Board of Directors Science Museum of Virginia Richmond, Virginia
1981-present:	Partner Irevell Associates Real estate partnership
1980-present:	Member, Board of Directors American Lung Association of Virginia Richmond, Virginia
1979-present:	Partner Revell Associates Real estate partnership
1978-present:	Member, Boyd-Graves Conference Chairman 1980-84 (For a description of the Conference, see response to question 19-A.)
1983-85:	Chairman, National Schools Committee Princeton University Princeton, New Jersey
1982-84:	Member, Executive Committee of Alumni Council Princeton University Princeton, New Jersey

1981-83:	Lecturer in Law College of William and Mary Williamsburg, Virginia
1975-79:	Chairman, Vietnamese Resettlement Committee St. Paul's Church Richmond, Virginia
1973-81:	Chairman, Local Schools Committee Princeton University Richmond, Virginia
Summer 1968:	Summer associate Wilmer, Cutler & Pickering Washington, D.C.
1967-69:	Chairman, Board of Student Advisers Harvard Law School Cambridge, Massachusetts
Summer 1967:	Summer associate Brydges, Broyles & McKenry Virginia Beach, Virginia
1966-69:	Foreign Service Officer (FSO-7) U.S. Department of State (On leave without pay to attend law school)
Summer 1966:	Summer school mathematics teacher Norfolk Academy Norfolk, Virginia
1961-66:	Active duty Naval Officer Naval aviator Final Rank - Lt., USN

(7) **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

1957-61:	NROTC midshipman, Princeton University
1961-66:	Active duty as Naval Officer; final rank Lt., USN Service included duty as a Naval aviator with fighter squadrons of the Atlantic Fleet.
Serial No:	647251
Status:	Honorably discharged January 1973

(8) Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Knox Fellowship from Harvard University for study at Magdalen College, Oxford University
Institute of Aeronautic Sciences Lecture Award, Princeton University, 1961
Law degree awarded from Harvard Law School magna cum laude
Elected as a Temporary Member of the Senior Common Room, University College, Oxford
Chairman, Board of Student Advisers, Harvard Law School

(9) Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Federal Bar Association

American Bar Association
- Antitrust Section
  - *Robinson-Patman Act Committee
  - *Private Antitrust Litigation Committee
  - *Monograph Series Committee
  - *International Trade Committee
- Litigation Section
  - *Committee on the Trial of Antitrust Cases
  - Committee on Trial Evidence

Virginia Bar Association
- Continuing Legal Education Lecturer on federal discovery rules
- Civil Litigation Committee (Chairman 1981-84)
  - Title 8.01 Subcommittee (Chairman 1979-81)
  - Local (Federal) Rules Committee
- Chairman, Federal Procedure Committee
- *Advisory Member, Senate Courts of Justice Subcommittee on Reform of Virginia Tort Claims Act and Virginia Tort Law
- National Moot Court Competition (brief judge in 1976 and 1978)

Boyd-Graves Conference (formerly the Tides Inn Conference) (Chairman 1980-84), a state-wide, select group of experienced trial lawyers, law professors and judges organized to consider and propose improvements in statutes and rules relating to civil litigation

Bar Association of the City of Richmond
- *Committee on Legal Economics and Professional Responsibility
- *Committee on Unprofessional Conduct
- *Committee on Admissions
- *Committee on Attorney-Client Relationships

American Arbitration Association

Virginia Trial Lawyers Association

Virginia State Bar Association
*Committee to Study Uniform Rules of Evidence
International Law Section

District of Columbia Bar

---

* Former member.

(10) Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong (such as civic, educational "public interest" law, etc.).

Member, Board of Directors, Science Museum of Virginia Foundation
Member, Board of Directors, Virginia Poverty Law Center
Member, Board of Directors, American Lung Association of Virginia
Chairman, Scientist and Industrialist of the Year Banquet and Awards Committee (1987)
St. Paul's Church (Episcopal)
Republican Party (state and national)
Harvard Law School Association
Maymont Foundation (nonprofit organization devoted to the preservation of a park, animal preserve and historic buildings for public enjoyment)
Bon Air Community Center (neighborhood recreation facility)
Planned Parenthood (wife)
Richmond Urban Forum (nonprofit organization devoted to improving racial harmony)
Foster Parents Plan
Subscriber, Hastings Center Report
Subscriber, NRL News
Subscriber, Policy Review
Subscriber, Philosophy and Public Affairs

(11) Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

1970	Virginia Supreme Court
1970	Fourth Circuit Court of Appeals
1970	U.S. District Court, Eastern District of Virginia
1970	U.S. District Court, Western District of Virginia
1976	Fifth Circuit Court of Appeals
1977	U.S. Tax Court
1979	U.S. Supreme Court
1980	D.C. Circuit Court of Appeals
1980	Tenth Circuit Court of Appeals
1981	Third Circuit Court of Appeals
*1977	Virginia Division of Motor Vehicles
*1978	U.S. Environmental Protection Agency
*1982	U.S. Nuclear Regulatory Commission
*1985	U.S. National Labor Relations Board
*1986	South Carolina Department of Health
*1986	South Carolina Coastal Council

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* These years reflect the approximate time periods during which I first practiced before these agencies. I do not recall whether any of these agencies require special admission to practice within the meaning of this question.

(12) Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written. Please supply a copy of any significant speech by you on constitutional law or national policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Chapters analyzing Federal Rules 706, 803(7) and 803(10) and their state counterparts published by the ABA in Evidence in America: The Federal Rules in the States (1987) (coauthored with Karen Adams)

A Case For The Abolition Of Jury Exemptions In Virginia, 20 University of Richmond Law Review 971 (1986) (coauthored with Tom O'Brien)

Infant Brain Death: Some Comments, 2 Notre Dame Journal of Law, Ethics and Public Policy 661-(1986)

Reporting On A Reporter (Book Review), 19 University of Richmond Law Review 881 (1985)

Letting Defective Babies Die: Who Decides?, American Journal of Law & Medicine, Vol. 7, No. 4 (Winter 1982)

Antitrust Law, The Virginia Law - A Basic Handbook (1981) (coauthored with William F. Young)

A Primer On Settling Uncertified Class Actions, Virginia Bar Association Journal (Fall 1980)

Legal Aspects Of SIDS, Medical College of Virginia Quarterly, Vol. 15, No. 4 (1980)

Initial Requests Under The Freedom Of Information Act, Virginia Bar Association Journal (Spring 1979)

A Survey Of Government Control Of Mergers In The United Kingdom, Part I, 22 Northern Ireland Legal Quarterly, No. 3 (1971)

A Survey Of Government Control Of Mergers In The United Kingdom, Part II, 22 Northern Ireland Legal Quarterly, No. 4 (1971)

In Defense Of In Pari Delicto, 56 American Bar Association Journal (1970)

(13) Health: What is the present state of your health? List the date of your last physical examination.

Excellent
April 21, 1987

(14) Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None, except that I am a member of the American Arbitration Association's panel of arbitrators and have served in cases as both a single arbitrator and as chairman of a panel of three arbitrators.

(15) Citations: If you are or have been a judge, provide citations for (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Not applicable.

(16) Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Not applicable.

(17) Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

I joined Hunton & Williams as an associate in the Richmond, Virginia office in 1969 and have been with the firm continuously since that time with two exceptions. First, in 1969-70, I took leave from the firm to take up a Knox Fellowship for law study at Magdalen College, Oxford University. This Fellowship was awarded to me by Harvard University. Second, in 1984, I was granted a sabbatical leave by the firm, which I spent as a Temporary Member of the Senior Common Room at

University College, Oxford. Apart from these temporary absences, I have practiced litigation law continuously at Hunton & Williams, where I became a partner in 1976. Throughout this period, I have been a member of the firm's Litigation Section, where I have engaged in a general litigation practice.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

My practice since 1969 is best described as a general litigation practice. While I have never specialized, there have been periods in my practice where I have devoted more significant periods of time to certain kinds of litigation. During my first five years, I spent more time on federal antitrust and trade regulation matters than on others. There was also a period of time in the mid- to late-1970s when I spent a considerable period of time on federal environmental litigation of various types. There was also a brief period of time in which I focused considerable attention on Freedom of Information Act matters. During the early period, I also devoted substantial time to medical malpractice issues. More recently, since 1982, I have devoted a very substantial proportion of my time to nuclear licensing matters before 3-judge trial and appellate panels of the NRC.

2. **Describe your typical clients, and mention the areas, if any, in which you have specialized.**

Many of my clients during my years at this firm have been large, medium and small corporations, including large banks (Bank of Virginia, now Signet Bank, and United Virginia Bank), utilities (Virginia Power and Long Island Lighting Company), manufacturers (Pulaski Furniture Corp., Ford Motor Co., General Motors and Ethyl Corporation), health care providers (Charter Medical Corporation, Westbrook Hospital and Stuart Circle Hospital) and municipalities and counties (City of Virginia Beach, City of Richmond and Dinwiddie County Water Authority).

In addition, I have represented a number of individuals in personal injury and business or contract claims. I have represented indigent individuals in federal court on criminal charges, Vietnamese refugees in a variety of civil matters, including a competency and commitment hearing, and two prison inmates.

c. 1. **Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court has varied, describe each such variance, giving the dates.**

For approximately the first twelve years of my practice, I appeared in court with reasonable regularity. Over time, the cases I participated in grew in size and the frequency of court appearances diminished. Significantly, however, I have been constantly and intensely involved in the entire litigation process, including specifically discovery and deposition practice, and negotiation.

In the last six years, the bulk of my time has been spent before 3-judge trial and appellate panels of the NRC. These proceedings have been massive, involving more than 100 days of trial hearings and prehearing conferences, dozens of trial witnesses, dozens of discovery depositions and more than 30,000 pages of transcript. The 3-judge trial and appellate panels were composed of one lawyer and two lay judges who were experts in various technical areas. The presence of two lay judges gave these proceedings something of the character of a jury trial.

In addition to these appearances, during the last six years, I have also appeared in federal courts in Virginia and New York and state administrative agencies in South Carolina. I also was chiefly responsible for substantial Michigan hazardous waste cases, including one before an EPA Administrative Law Judge. These matters were resolved on motions and briefs.

2. **What percentage of these appearances was in:**
   (a) federal courts
   (b) state courts of record
   (c) other courts.

My best estimate is that 70-75% of my appearances (80-90% in the last six years) have been in federal courts, including the 3-judge federal NRC hearings, with the remainder divided between state courts of record and administrative agencies.

3. **What percentage of your litigation was:**
   (a) civil;
   (b) criminal.

The great majority (95%) of my litigation experience has been civil in nature. Over the years, however, I have handled indigent criminal matters in federal trial and appellate courts and represented clients who were targets or potential targets before a federal grand jury.

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

My records for the past 17-18 years are not sufficiently complete to permit me to give precise numbers in response to this question. My best estimates are as follows:

Cases tried to verdict as:	
Associate counsel	10
Chief counsel	26
Sole counsel	7
Total	43

These figures may include one or two jury trials that were settled before the actual verdict was rendered. Also worth noting is that in the

last six years, the great bulk of my time has been devoted to the very large litigations before the NRC. A thumbnail sketch of the massive nature of these litigations is given in response to questions 17 c-1 and 18 c-2.

Of course, many other matters in which I have been involved have settled before judgment, but not before substantial litigation activity, including depositions and oral arguments on motions.

5. What percentage of these trials was
   (a) jury
   (b) non-jury.

Jury	40% (approx.)
Non-jury	60% (approx.)

(18) Litigation. Describe the ten most significant litigated matters you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. City Council of Richmond v. Golding
Chief Counsel for City of Richmond
Trial Date: Late 1978
Supreme Court of Virginia; Chief Justice Lawrence I'Anson
(804-397-4926)
Opposing Counsel: R. Harvey Chappell, Jr., Mutual Building, Richmond, VA 23219 (804-644-7851) and William A. Dervishian, 600 North Boulevard, Richmond, VA 23220 (804-355-2121)

This case was unique in many respects. It was the first time that an elected City Council member's eligibility to serve had been challenged by other members of City Council on the basis of failure to meet statutory office-holding requirements. The arguable failure to meet these qualifications did not become apparent until after the election and until after the individual had been sworn in and taken his seat. The proceeding was also significant because it involved the filing of a writ directly with the Supreme Court of Virginia. The Supreme Court granted expedited argument and resolved the matter within hours of argument in light of its importance to the governance of the City.

As the partner in charge, I was chiefly responsible for this litigation. I was assisted by my colleague John Charles Thomas, who thereafter became the first Black Justice of the Supreme Court of Virginia. I was primarily responsible for preparation of the briefs and for oral argument. Justice Thomas (804-786-6404) and I both argued before the Supreme Court of Virginia. The result was favorable to our client, the City of Richmond. Mr. Golding was unseated. City Council was held to have the power to name a successor.

2. LILCO (Quality Assurance and Systems Interaction Litigation)
Chief Counsel for LILCO
Citation: 18 N.R.C. 445 (1983); 20 N.R.C. 1102 (1984)
Judges: Lawrence Brenner (202-653-5052), Dr. James H. Carpenter and Dr. Peter A. Morris (301-492-4331)
Opposing Counsel: Bernard Bordenick (301-492-9586), Richard Rawson (201-221-4352), and Edwin Reis (301-492-7505) for NRC, Washington, D.C. 20555 and Lawrence Lanpher for Suffolk County, 1900 M Street, N.W., Washington, D.C. 20036 (202-452-7011)

LILCO (Emergency Diesel Generator Litigation)
Chief Counsel for LILCO
Citation: 21 N.R.C. 1637 (1985); 22 N.R.C. 776 (1985)
Judges: Lawrence Brenner (202-653-5052), Dr. Peter A. Morris (301-492-4331) and Dr. George A. Ferguson
Opposing Counsel: Bernard Bordenick (301-492-9586), Edwin Reis (301-492-7505) for NRC; Alan R. Dynner for Suffolk County (202-452-7044)
Hearing Dates: Listed below are some of the hearing dates for both litigations.

1982:	March 9-10
	April 14
	May 4-7, 25-28
	June 1-4, 8-11, 15, 17-18, 22-25
	July 6-9, 13-16, 20-22, 27-30
	August 3-5, 24-27
	September 14-17, 21-24
	October 27-29
	November 2-5, 9-12, 16-19, 23, 30
	December 1-3, 7-10, 14-17, 20-22
1983:	January 10-13, 17-20, 24-27, 31
	February 1, 22-24
	April 5-8
	June 10
1984:	February 22
	March 27
	September 10-13, 17-20, 24-26
	October 1-4, 22-24, 29-31
	November 1-2, 7-9, 13-16, 20
1985:	February 12-14, 19-21
	March 5-8, 11-12
	September 26

As noted previously, the NRC litigations in which I have been involved have been massive. They involved months of hearings, dozens of witnesses, tens of thousands of pages of transcript and thousands of pages of briefs and findings. As chief counsel, I prepared and conducted the cross-examination of a large number of witnesses and was principally responsible for all the direct testimony, the oral arguments and the preparation of findings of fact, briefs, motions and supporting memoranda. This case was significant not only for what was at stake — the licensing of a $5 billion nuclear power plant — but also because it raised legal and technical factual issues that were both difficult and novel.

These large litigations both ended in lengthy decisions in favor of our client. Copies of the opinions are attached. Both decisions were appealed, and I argued both appeals. The appellate decisions were also favorable and are attached. No further appeal has been filed.

3. National Indian Youth Council v. Andrus
Chief Counsel for Consolidation Coal Co.
Trial Date: January-February 1980
Citations: 501 F. Supp. 649, 623 F.2d 694 (10th Cir. 1980)
U.S. District Court, New Mexico/Judge Santiago Campos
Opposing Counsel: John J. Kelly, Lubber, Hughes & Kelly,
Albuquerque, New Mexico

This case involved the right to surface mine coal on the Navajo Indian Reservation in the Four Corners area of Arizona, New Mexico, Utah and Colorado. The case raised difficult and novel issues under the National Environmental Policy Act of 1970, the Surface Mining Control and Reclamation Act of 1977, the Historic and Archeological Data Preservation Act of 1974 and The National Historic Preservation Act of 1966. It was also significant to me because it required taking depositions and hearing testimony from witnesses who spoke only the Navajo language and therefore required an official translator as well as translators acting on behalf of the various parties.

After a full hearing on the injunction, the District Court ruled in favor of our client and the matter was appealed to the Tenth Circuit, which affirmed. As the supervising lawyer, I had overall responsibility for the preparation, direction and trial of the case. At trial, I shared with my then-associate (now partner) D. Alan Rudlin (804-788-8459) the various trial tasks. I examined a number of expert witnesses and argued many of the issues to the court.

4. Brown v. Cameron-Brown Company
Chief Counsel for United Virginia Bank and Allstate Enterprises
Citations: 92 F.R.D. 32 (E.D. Va.), 652 F.2d 375 (4th Cir. 1981)
Liaison Counsel: James C. Roberts, Mays & Valentine,
P.O. Box 1[illegible] Richmond, VA 23208 (804-644-6011)
U.S. District Court, Richmond/Judge D. Dortch Warriner

Opposing Counsel: Calvin W. Breit, Norfolk, VA (804-425-7052), Arnold Levin, Gordon Gelfond and Michael D. Fishbein, Philadelphia, PA
Other Counsel: Conrad M. Shumadine, Kaufman & Canoles, Norfolk, VA (804-628-5525) and Michael W. Smith, Christian, Barton, Epps, Brent & Chappell, Mutual Building, Richmond, VA 23219 (804-644-7851)

This case raised for the first time the question whether the custom of mandatory tax and insurance escrows for residential mortgages constituted a violation of the federal antitrust laws. The matter was decided favorably to my clients and the other defendants by way of summary judgment. The Fourth Circuit affirmed.

This case involved a large number of parties. We selected James C. Roberts, Mays & Valentine, 1111 East Main Street, Richmond, VA 23219 (804-644-6011) as our liaison counsel. Because so many lawyers were involved, we established a Drafting Committee to develop the litigation strategy and to draft the appropriate pleadings. I served on this Committee and played a substantial role in those tasks.

5. Commonwealth of Virginia v. United Air Lines, Inc.
Chief Counsel for United Air Lines, Inc.
Trial Date: 1977-78
Citation: 248 S.E.2d 124
Circuit Court of Richmond/Judge Alexander H. Sands, Jr. (804-353-5112)
Opposing Counsel: Anthony F. Troy (then Attorney General), Mays & Valentine, 1111 East Main Street, Richmond, VA 23219 (804-644-6011) and John G. MacConnell (then Assistant Attorney General), McCarthy & Durrette, 700 East Main Street, Richmond, VA 23219 (804-780-0505)

This case raised important and novel questions concerning the applicability of Virginia state sales tax to the activities of interstate airline carriers. It raised for the first time the question of the power of the State of Virginia to impose state sales and use taxes on activities that occurred at Washington National Airport, a federal reservation. It also raised important issues of federal law, including construction of the Airport and Airways Development Act of 1970, Public Law No. 91-258 § 210.

As the partner in charge of this matter, I was chiefly responsible for trial preparation, including selection and preparation of witnesses, and I personally conducted the examination and cross-examination of witnesses and argument to the trial court. The trial court decided the matter favorably to our client, United Air Lines. The matter was appealed to the Supreme Court and again, as the partner in charge of the case, I had overall responsibility for, and played a substantial role in, the preparation of the appellate briefs and preparation for oral argument. My retired partner, H. Brice Graves, argued the matter. The Supreme Court affirmed in part, reversed in part, and remanded.

6. Chessie v. ICC
Co-counsel for Chessie
Trial Date: 1974
Citation: 392 F. Supp. 358 (E.D. Va. 1975)
Three-Judge U.S. District Court, Richmond/Judge Merhige, Judge Butzner and Judge Warriner; direct appeal to U.S. Supreme Court
Opposing Counsel: David G. Lowe, (then Assistant U.S. Attorney), U.S. Magistrate, Richmond, VA (804-648-1913)

This case was significant for it raised an issue of first impression concerning whether the Interstate Commerce Commission could place conditions on the approval of a tariff.

I was the principal lawyer from this firm on this case. In this connection, I did the research, prepared the briefs and argued the matter before the 3-judge District Court. We prevailed there. I also successfully argued the TRO/preliminary injunction. The matter was appealed directly to the Supreme Court of the United States where I again was the principal drafter of the brief. While I participated in the preparation for argument before the Supreme Court, the matter was argued by the General Counsel of the Chessie Railroad. The Supreme Court reversed.

7. General Electric Co. v. Commonwealth of Virginia
Chief Counsel for General Electric Co.
Trial Date: approximately 1982
Circuit Court of Richmond/Judge Willard Walker
Opposing Counsel: Kenneth W. Thorson, Assistant Attorney General, P.O. Box 6-L, Richmond, VA 23220

This case was significant because it presented for the first time in Virginia the question whether conformity in Virginia permitted a corporation to exclude from its Virginia income tax the income attributable to its subsidiary Domestic International Sales Corporation (DISC).

As the partner in charge of this matter, I directed the trial preparation. At trial, I conducted the examination and cross-examination of the witnesses and, together with the associate who was assisting me in this matter, I argued it to the trial court. We prevailed, and the matter is now on appeal to the Supreme Court of Virginia.

8. Orlich v. Larus
Chief Counsel for Orlich
Trial Date: approximately 1981
Circuit Court of Richmond/Judge James E. Sheffield (804-783-2909)
Opposing Counsel: Carl F. Bowmer, Christian, Barton, Epps, Brent & Chappell, Mutual Building, Richmond, VA 23219 (804-644-7851)

This case was, at the time, the longest civil jury trial in the Circuit Court for the City of Richmond. It lasted almost four weeks. It raised a number of difficult evidentiary issues, including whether inadvertent waiver of attorney-client privilege was sufficient to permit the use of a document at trial.

As the partner in charge of this litigation, I directed trial preparation and, together with my then-associate John Charles Thomas, now a Justice of the Supreme Court of Virginia, I examined and cross-examined witnesses and made numerous arguments to the court. The jury returned a verdict of approximately $815,000 in favor of our client. After further briefing and argument lasting several weeks, the trial judge set aside the verdict and granted a new trial. In the course of preparing for the new trial, the matter was settled.

9. Ethyl Corporation v. United States
U.S. District Court, Richmond/Judge Richard L. Williams
Opposing Counsel: Robert L. Gordon, Department of Justice
(202-724-6438)

This case concerned the valuation of the water rights in the James River and Kanawha Canal. In the early 1970s, various of these rights were owned by Ethyl, Vepco and the C&O Railway. By agreement, the C&O Railway and Vepco transferred their rights to Ethyl to enable Ethyl to donate the complete package of rights to the City of Richmond. Ethyl then sought to take a charitable deduction in an amount equal to Ethyl's appraisal of the fair market value of the rights. The IRS disallowed the deduction, and litigation ensued before Judge Williams. After considerable discovery and negotiation, the matter was settled, and Ethyl and its partners received a refund in the $5-6 million range.

This case is significant because it raised difficult and novel issues of water rights valuation and an interesting factual and legal issue concerning recovery of costs and attorneys' fees from the United States.

As the partner in charge of this case, I was responsible for and conducted the discovery, trial preparation and negotiation with opposing counsel.

10. Folts v. City of Richmond
Chief Counsel for City of Richmond/Majority of City Council
Trial Date:
Circuit Court of Richmond/Judge Wright
Opposing Counsel: William R. Cogar, Mays & Valentine,
1111 East Main Street, Richmond, VA 23219

This reapportionment case raised the novel question whether reapportionment was required more often than once every decade where, as was true here, reliable evidence of malapportionment became available prior to the next decennial census. As the partner in charge of this case, I participated with my associate, John Charles

Thomas (now a Justice of the Virginia Supreme Court), in all research and trial preparation aspects. I also argued the matter to the trial court. The trial court decided that, notwithstanding available, reliable evidence of gross malapportionment, redistricting was not necessary until the next decennial census, some two years or more away. This was contrary to the position we had taken, but our client, the City of Richmond, did not elect to take an appeal. The case also involved an unsuccessful attempt to remove to federal court. See Folts v. City of Richmond, 480 F. Supp. 621 (E.D. Va. 1979).

In connection with this matter, I advised the City on numerous Voting Rights Act issues.

(19) **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)**

A. Law Reform Activities. The Boyd-Graves Conference (formerly the Tides Inn Conference) is a select group of 80-90 experienced trial lawyers, law professors and judges from throughout Virginia dedicated to civil litigation law reform. I have been a Conference member since its founding in 1978, and I served as its Chairman from 1980-84. The Conference is organized into subcommittees and study groups that focus on various areas of civil litigation and recommend specific statutory or rule changes. Recommendations are then debated and voted on at the Conference's two-day meetings. Successful proposals are then presented to the General Assembly of Virginia or the Judicial Conference. In connection with my Conference duties, I have participated in developing law reform proposals, drafting bills and rule changes, and advocating these before the appropriate General Assembly committee. The most recent examples of this activity involved reform of Virginia's statute on exemptions from jury service and efforts to provide law clerks for Richmond's state circuit judges. For a description of the nature of the juror exemption effort, see the first article listed in response to question 12. For a description of the (successful) law clerk effort, call Chief Judge Thomas N. Nance (804-780-4959) or Judge Melvin R. Hughes (804-780-8315) of the Circuit Court for the City of Richmond.

Other law reform activities include service as Chairman and member of the Virginia Bar Association's Civil Litigation Committee and member of the Select Committee on Rules of Evidence. As a member of the American Bar Association's Litigation Section, I coauthored with my colleague Karen Adams three papers comparing certain Federal Rules of Evidence with their counterparts in various states. These are published in the ABA's Evidence in America: The Federal Rules in the States (1987).

B. Law Teaching. During the academic years 1981-83, I taught a trial practice seminar at the Marshall-Wythe School of Law at the College of William and Mary. Currently, I am serving as a faculty member for the summer session of the National Institutes of Trial Advocacy (NITA). I have also served as a lecturer at Virginia Bar continuing legal education programs.

C. Pro Bono Work. I include my involvement in pro bono work among the significant legal activities I have pursued. These pro bono activities are described in response to question III(2). In general, I have, on several occasions, represented indigents accused of crimes in federal court. Together with my former partner, John Charles Thomas (now Justice of the Supreme Court of Virginia), I have also provided pro bono services to minority litigants in various kinds of cases. Also, in connection with my efforts to resettle a large number of Vietnamese refugees in the Richmond area, I have provided a wide range of pro bono legal services to these refugees, including representation in civil commitment hearings, landlord-tenant, personal injury, insurance, employment discrimination and family reunification efforts.

D. Other Cases. I have participated in several cases which are not listed in response to question 18, but which nonetheless may merit mention.

1. Mullins v. Ford Motor Co. I was chief counsel in defending this nationwide class action, inter alia, under the Magnuson-Moss Warranty Act. After considerable deposition and document discovery, I negotiated a settlement with representatives of an uncertified class and obtained appropriate court approval.

2. Ethyl Corp. v. Internal Revenue Service. I was second in command of a team of lawyers representing Ethyl in a tax refund suit growing out of the then-mammoth merger of Ethyl Corporation into the Albemarle Paper Co. At the time, this was one of the largest Section 334(b)(2) cases to reach litigation.

3. Fleischer Development Co. v. Vepco. This large antitrust case tested whether an electric utility's sponsorship of underground distribution in neighborhoods constituted a violation of the federal antitrust laws. I participated in the jury trial as an associate lawyer and conducted examination and cross-examination of witnesses. A favorable verdict was obtained.

4. Cope Allman v. Ethyl Corp. This large antitrust action involved hundreds of aerosol valve patents in this country and Europe. Agreements concerning these patents were alleged to constitute a division of world territories and other antitrust violations. I participated as an associate lawyer in all phases of discovery and trial preparation, including depositions, document productions and plant inspections in Europe. The matter was ultimately settled.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

(1) **Describe all financial arrangements, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.**

At present, my wife and I are partners in Revell Associates and Irevell Associates, two small real estate partnerships. The other partners are two current law partners and their spouses. Specifically, W. Taylor Reveley, III and his spouse are my partners in Revell Associates and W. Taylor Reveley, III and Donald P. Irwin and their spouses are my partners in Irevell Associates. Each partnership owns one piece of rental real estate which together involve five apartments. I am planning, for financial reasons, to sell my interests in both of these partnerships if I am confirmed.

(2) **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

In all cases, I will comply with the applicable rules, regulations, statutes and advisory opinions published for the federal judiciary concerning conflicts of interest. (See, e.g., Code of Judicial Conduct for United States Judges, 101 F.R.D. 389.) In appropriate instances, I will also seek guidance from the Advisory Committee on Codes and Conduct of the Judicial Council.

(3) **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No.

(4) **Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

No.

(5) **If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?**

If I am confirmed, I will sever all relations with my law firm. It is also my current plan to take my financial interest in the partnership in a lump sum

payment rather than a payout for any period. However, if financial considerations dictate that I should receive this interest over some time period, I will not make that time period any longer than three years. Also, if I am confirmed, I will withdraw from the firm's retirement plan and place the amount due me from this plan in another suitable plan or fund independent of the law firm.

(6) **Please complete the attached financial net worth statement in detail. (Add schedules as called for.)**

See attached financial statement.

III. GENERAL (PUBLIC)

(1) **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose 'tself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In the main, the duties of a district judge involve the impartial, disinterested application of known law to adjudicated facts. Ascertaining the law from the body of statutes and decisions of our legal tradition is precisely the kind of task for which I have trained all my professional life. This task and the application of law to adjudicated facts should rarely, if ever, give rise to issues of judicial activism as described in this question. Indeed, probably far more important in the everyday life of a federal district judge is the necessity to ensure not only impartiality, but the strict appearance of impartiality. Only judges who are actually impartial, and who also appear to be impartial, can be effective in discharging their awesome responsibilities.

Beyond this, the following may also be responsive. Federal courts are countermajoritarian institutions; judges are unelected and tenured for life. Mindful of this, I think it appropriate that federal judges should focus sharply on resolving only the actual controversies properly presented to them and avoid broad, sweeping policy decisions. As countermajoritarian institutions, courts are suited not for setting policies or finding expedient resolutions for widespread social problems, but for articulating and applying on a case-by-case basis the enduring principles or values found in our rich heritage of legal precedents, statutes and the Constitution. Judicial activism, in its popular pejorative sense, should certainly be avoided. At the same time, however,

judicial restraint should never be an excuse for judicial timidity in the face of violations of personal freedoms and rights or any other transgression of the law.

(2) **What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.**

A. Over the years, I have volunteered to represent indigents accused of crimes in federal court. Among the cases I have handled as a result are:

United States v. John Mack Smith
United States v. Otha Miles Salmon
Landman v. Royster
United States v. Michael Myers

The Myers case was entirely on a pro bono basis. Some time was also donated pro bono in other cases, although some fees (at the statutory rate) were also charged.

B. Since 1975, I have been involved in resettling a number of Vietnamese refugees (approximately 80) in the Richmond area. These resettlement efforts have spanned a wide range of legal and non-legal activities, all pro bono. On the non-legal side, my resettlement activities have included such matters as locating jobs and living accommodations, tutoring in English and other subjects, assistance in college admissions, providing temporary accommodations in our home, making arrangements for medical care and schooling and simply being a friend in times of stress and crisis. On the legal side, I have provided a range of pro bono legal services in a variety of civil matters, including commitment proceedings, landlord-tenant, personal injury, insurance and employment discrimination issues. Also, I, with the assistance of others in my firm, have rendered legal advice and aid in connection with refugee family reunification efforts.

C. Together with my former partner, John Charles Thomas (now Justice, Supreme Court of Virginia), I have, on occasion, provided pro bono litigation services to minority litigants. In particular, we litigated a breach of contract and fraud suit in Norfolk Circuit Court in an ultimately successful effort to save our client's home from imminent foreclosure. We also provided pro bono legal services to a minority church threatened with loss of its charitable tax status and to a litigant in a property dispute.

D. In 1978-79, I undertook, with the assistance of my then-partner Justice John Charles Thomas, the then-unpopular representation of the Black members of Richmond's City Council, including the mayor. This representation included litigation of a novel reapportionment issue as well as advice on issues under the Voting Rights Act and the Fourteenth and

Fifteenth Amendments to the Constitution. These services were not rendered pro bono.

E. I serve as the Virginia Bar Association's designated representative member on the Board of Directors of the Virginia Poverty Law Center. The Center was established in 1978 to provide Virginia's legal aid programs with legal skills training, management training, legal assistance and legislative and administrative proposals affecting the poor. The Center also responds to requests from legal aid advocates throughout Virginia to assist with pending cases. In connection with my services on the Center's Board, I have advocated increased involvement of the private bar in pro bono work, and indeed have volunteered my firm to participate in several cases.

F. With the aid of my firm colleagues, I have provided substantial pro bono legal services to the Science Museum of Virginia, a charitable foundation.

G. The Bar Association of the City of Richmond, the Metropolitan Richmond Women's Bar Association and the statewide Old Dominion Bar Association (Virginia's bar association of Black lawyers) all endorsed my candidacy for the federal bench. This may reflect the judgment of others regarding my concern for equal justice under the law.

THOMAS S., III AND MARTHA ANNE ELLIS

Financial Statement

June 30, 1987

THOMAS S., III AND MARTHA ANNE ELLIS

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KEITER, STEPHENS, HURST, GARY & SHREAVES
CERTIFIED PUBLIC ACCOUNTANTS
P. O. BOX 32066
RICHMOND, VIRGINIA 23294-2066
(804) 747-0000

MAIN OFFICE
INNSLAKE PLACE
INNSBROOK CORPORATE CENTER
4401 DOMINION BOULEVARD
GLEN ALLEN, VIRGINIA 23060

DOWNTOWN OFFICE
THE VIRGINIA BUILDING
ONE NORTH FIFTH STREET
RICHMOND, VIRGINIA 23219

Thomas S., III and
Martha Anne Ellis
Richmond, Virginia:

We have compiled the accompanying statement of financial condition of Thomas S., III and Martha Anne Ellis as of June 30, 1987, in accordance with standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of the individuals whose financial statements are presented. We have not audited or reviewed the accompanying statement of financial condition and, accordingly, do not express an opinion or any other form of assurance on it. However, we did become aware of a departure from generally accepted accounting principles that is described in the following paragraph.

Generally accepted accounting principles require that personal financial statements include a provision for estimated income taxes on the differences between the estimated current values of assets and the estimated current amounts of liabilities and their tax bases. The accompanying statement of financial condition does not include such a provision, and the effect of this departure from generally accepted accounting principles has not been determined.

Keiter, Stephens, Hurst, Gary & Shreaves

July 7, 1987

Exhibit A

THOMAS S., III AND MARTHA ANNE ELLIS

Statement of Financial Condition
June 30, 1987

Assets

Cash and cash equivalents		$ 120 885
Investments in marketable investments and securities (note 2)		117 289
Investment in limited partnerships (note 3)		4 008
Real estate (Schedule 1):		
Personal residence	$ 145 000	
Other	550 000	695 000
Interest in business partnership (note 4)		171 838
Cash value of life insurance		7 931
Vested interest in partnership retirement plan (latest valuation date of March 31, 1987)		215 090
Automobiles and sailboat (note 5)		11 200
Personal effects		30 000
Total assets		$1 373 241

Liabilities and Net Worth

Accounts and charge card balances		$ 1 000
Mortgages payable (Schedule 1):		
Personal residence	$ 24 445	
Other	116 357	140 802
Total liabilities		141 802
Net worth (assets less liabilities)		1 231 439
Total liabilities and net worth		$1 373 241

Contingent liabilities (note 7)

See accompanying notes and accountants' report.

Schedule 1

THOMAS S., III AND MARTHA ANNE ELLIS

Real Estate
June 30, 1987

	Owner	Date Acquired	Estimated Fair Market Value	Mortgages Payable
Personal residence:				
4267 Cheyenne Road Richmond, Virginia	Joint	1971	$145 000	$ 24 445
			145 000	24 445
Other:				
Duplex 2311 Hatton Road Virginia Beach, Virginia	MAE	1981	160 000	81 397
Building lot Lynncove Lane Virginia Beach, Virginia	MAE	Gift	170 000	-
Vacation property 11th Avenue Southern Shores, North Carolina	Joint	1978	125 000	19 096
One-half interest Residential rental property Richmond, Virginia Revell Partnership	TSE III		55 000	-
One-Sixth interest Residential rental property Richmond, Virginia Irevell Partnership	MAE		20 000	7 932
One-Sixth interest Residential rental property Richmond, Virginia Irevell Partnership	TSE III		20 000	7 932
Total other			550 000	116 357
Total real estate and mortgages payables			$695 000	$140 802

THOMAS S., III AND MARTHA ANNE ELLIS

Notes to Financial Statement

(1) Summary of significant accounting principles:

The accompanying financial statement includes the assets and liabilities of Thomas S., III and Martha Anne Ellis. Assets are stated at their estimated current values, and liabilities at their estimated current amounts.

(2) Investment in marketable securities and investments:

The estimated current values of marketable securities are reflected at their quoted closing prices as of June 26, 1987 and consist of the following:

Investment	Shares or Face Value	Market Price	Value
Amax, Inc.	112	19.875	$ 2 226
American Express Company	600	36.000	21 600
Amn. Info. Tech. Corporation	16	88.250	1 412
American Tel. and Tel.	111	28.375	3 149
Bell Atlantic Corporation	22	69.625	1 531
Bellsouth Corporation	49	41.750	2 045
Borden, Inc.	300	61.250	18 375
Eastman Kodak	75	88.000	6 600
Lehman Corporation	397	16.875	6 699
Nynex Corporation	22	71.000	1 562
Pacific Telesis Grp.	44	27.250	1 199
Reynolds Metals Com.	100	75.250	7 525
Southwestern Bell Cp.	33	39.625	1 307
Sterling Drug, Inc.	150	58.000	8 700
Union Carbide Corporation	300	30.625	9 187
U.S. West, Inc.	22	54.000	1 188
Union Cbde. Cp. Spl. Div. Rt.	100	.400	40
Grant Co. Wash Pub. Util.	1,000	83.100	831
Exxon Corporation	104	91.500	9 516
Robins A. H. Company, Inc.	100	26.500	2 650
Unisys Corporation	40	126.750	5 070
Colorado Intst. 1JN8%89RG	3,000	98.103	2 943
Caro Tel. 10T9 125%00RG Dt. 002 Columbia Riv. Rev. May56 03.875%Nov01	2,000	96.719	1 934
Total market value			$117 289

THOMAS S., III AND MARTHA ANNE ELLIS

Notes to Financial Statement, Continued

(3) Investment in limited partnerships:

Thomas S. Ellis, III has invested in three oil and gas limited partnerships. Two of these limited partnerships have changed status to "Master Limited Partnerships" enabling these investments to trade on the open market. The market value of the third investment is not determinable; therefore, its value reflects only the December 31, 1986 capital account balance (book value). Accordingly, estimated values are as follows:

Name of Partnership	Basis for Valuation	Value
Unit 1980 Oil and Gas Program	OTC	$1 667
Unit 1981 Oil and Gas Program	OTC	2 227
BDOL 1979 Program Ltd.	Book Value	114
Total value		$4 008

(4) Interest in business partnership:

Thomas S. Ellis, III is a partner in the law firm of Hunton & Williams, Richmond, Virginia. His interest in the firm is comprised of his capital account as well as an interest in the receivables of the firm. As of June 30, 1987, his capital account reflected a balance of $6,709. His interest in the receivables of the firm approximated $165,129, thus resulting in a total value at June 30, 1987 of $171,838. Although this combined value is reflected in the Statement of Financial Condition, the Executive Committee of Hunton & Williams has the right to increase or decrease this value as they so determine at the withdrawal date.

(5) Automobiles and sailboat:

Estimated values at June 30, 1987 are as follows:

1980 Volksvagon Rabbit	$ 1 200
1984 Volvo Station Wagon	9 500
13 Foot Sailboat	500
	$11 200

(6) Sources of income:

Total sources of income for the years ended December 31, 1986 and 1985 consist of the following:

	1986	1985
Interest income from municipal bonds and financial institutions	$ 1 432	$ 1 817
Dividend income from publicly traded stocks and bonds	6 186	5 100
Hunton & Williams	209 089	188 387
	$216 707	$195 304

THOMAS S., III AND MARTHA ANNE ELLIS

Notes to Financial Statement, Continued

(6) Sources of income, continued:

Sources of income do not reflect net income or loss from rental property or investments in limited or general partnerships other than Hunton & Williams.

(7) Contingent liabilities:

Thomas S. Ellis, III is contingently liable for Firm and real estate partnership debts, as well as the following notes endorsed for others:

To United Virginia Bank in the amount of $7,000 made to Gavie Nienabel

To United Virginia Bank in the amount of $2,500 made to John Robinson

CONFIRMATION HEARING ON: WILLIAM L. STANDISH, WILLIAM L. DWYER, ERNEST C. TORRES, AND JAMES A. PARKER

FRIDAY, SEPTEMBER 11, 1987

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:00 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick Leahy, presiding.

Also present: Senators Specter, Grassley, and Humphrey.

Staff present: Steven J. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; Robert J. Short, minority chief investigator.

Senator LEAHY. The committee will come to order.

We will meet this morning from now until 11:30. If we are unable to finish, we will come back this evening at 8:00.

We have a number of nominees here. William Dwyer, James Parker, William Standish, and Ernest Torres, as well as a number of Senators who are going to testify.

This hearing, incidentally, will be the tenth hearing in this Congress to consider nominations to the federal courts. Of course we are going to hear first from the Senators who wish to introduce the nominees to the committee, because of the Senate schedule, and the fact that each Senator here is scheduled in about twelve other places. Nobody knows who does the scheduling around here. It is one of the best-kept secrets. As near as we can tell, it is a 26-year-old IBM machine that was partially destroyed in an aborted missile launch, bought at five times its value by the U.S. Senate and used for scheduling purposes, and that is how we end up being scheduled in twelve places at once.

But in light of the fact that we are celebrating the 200th year of our country and our Constitution, we are soon going to move from the quill-pen era, and the Senate is going to bravely jump with both feet, eagerly, into the 1940's, in the way it runs things around here, as soon as the Rules Committee gets to it.

So, let me note, for the record, that each nominee before the committee today has completed an extensive questionnaire on his qualifications, his experience, his financial situation. The publicly available portions of these questionnaire responses will be printed in the record of this hearing.

We will also keep the record open for a limited time for follow-up questions to the nominees, for additional questions that may be

submitted by members of the committee who are unable to be present today, and we will include in the record the full statements of any Senator.

We will also hear testimony this morning from several members of the public who wish to comment on the nomination of William Dwyer.

I should note, for the record, that the committee has invited to this hearing every party who has expressed to the committee an interest in testifying pro, con, and neutral on this nomination.

Not all of these witnesses chose to accept the committee's invitation.

With respect to witnesses from the State of Washington, the record should reflect, and it was reported in the Seattle press as early as August 11, that a hearing would be held this week on the Dwyer nomination. I believe that that report provided adequate notice for interested parties to step forward to ask to testify.

So we can complete hearings on all four of these nominations some time today. Then after the Bork hearings are completed, the committee can turn to the consideration of other pending judicial nominations.

We should also note, that in every instance when a Senator, whether a member of this committee or any other Senator has asked us because of the situation in their State, to try to expedite the hearings of a nominee from their State, I have done so. With only one exception, no one has ever raised an objection to this.

Before we turn to the introductions, let me note, for the record, that both Senators Domenici and Bingaman hoped to be here to introduce nominee James Parker.

Both of them, unfortunately, have to be in New Mexico this morning, so, without objection, I will include in the record of this hearing a statement by Senator Bingaman on behalf of himself, and a statement by Senator Domenici, and we will, at an appropriate point, recognize Representative Joe Skeen of New Mexico, who is here to introduce Mr. Parker.

[The statements of Senators Leahy, Domenici and Bingaman follow:]

PREPARED STATEMENT OF SEN. PATRICK LEAHY

This morning, the Judiciary Committee holds its tenth hearing in this Congress to consider nominations to the federal courts.

Today, we will take testimony on four nominations to United States District Courts. William L. Dwyer has been nominated for the Western District of Washington; James A. Parker, for the District of New Mexico; Judge William Standish, for the Western District of Pennsylvania; and Ernest C. Torres, for the District of Rhode Island.

As we customarily do, we will hear first from Senators who wish to introduce nominees to the Committee. Before we turn to these introductions, let me note for the record that each nominee before the Committee today has completed an extensive questionnaire on his qualifications, experience, and financial situation. The publicly available portions of these questionnaire responses will be printed in the record of this hearing. We will also keep the record open for a limited time for follow-up questions to the nominees, and for additional questions that may be submitted by members of the Committee who are unable to be present this afternoon. Finally, we will include in the record the full introductory statements of home-state Senators.

At this morning's hearing, we will also hear testimony from several members of the public who wish to comment on the nomination of William Dwyer. Let me state

for the record that the Committee has invited to this hearing every party who expressed to the Committee an interest in testifying—pro, con or neutral—on this nomination. Not all of these witnesses chose to accept the Committee's invitation. With respect to witnesses from the State of Washington, the record should reflect that it was reported in the Seattle press as early as August 11 that a hearing would be held this week on the Dwyer nomination. I believe that that report provided adequate notice for interested parties to step forward to ask to testify. I hope that we can complete hearings on all four of these nominations this morning, so that, after the Bork hearings are completed, the Committee can turn to the consideration of other pending judicial nominations.

Before we turn to the introductions, let me note for the record that both Senators Domenici and Bingaman hoped to be here to introduce nominee James Parker. Unfortunately, both had previous commitments at an important event in their home state of New Mexico. Without objection, I will include in the record of this hearing a statement by Senator Bingaman, on behalf of himself and Senator Domenici, endorsing the nomination of James Parker.

PREPARED STATEMENT OF SEN. PETE V. DOMENICI

Mr. Chairman, I apologize for being unable, due to previous commitments in New Mexico, to appear before your distinguished Committee to introduce James A. Parker to you and the other members of the Committee.

I am pleased that President Reagan has nominated Jim Parker to serve as a United States District Court Judge for the District of New Mexico. Jim Parker is a man of superior ability and qualifications. I believe that he will serve the nation with great distinction.

New Mexico is blessed with many well-qualified and distinguished attorneys. When Judge Howard C. Bratton announced his intention earlier this year to assume Senior Status, I submitted to the President the names of 9 attorneys in New Mexico who, through their professional expertise, personal integrity, and commitment to justice, have demonstrated that they possess the qualifications to serve as a Federal judge. It is a testament to the outstanding qualifications of Jim Parker that the President selected him from among this very distinguished group to fill this position.

I wholeheartedly support the President's judgment. Jim Parker will make an excellent Federal judge, and I urge the Committee to approve his nomination.

Jim Parker graduated from Rice University in 1959 with a degree in Mechanical Engineering. He went on the University of Texas School of Law, where he graduated first in his class in 1962. At the University of Texas, he was an editor of the law review, president of the Phi Delta Phi Legal Fraternity, and a member of the Order of the Coif.

While in law school, Jim Parker worked for the Texas State Legislature as a legislative draftsman. Immediately after graduating, he joined the law firm of Modrall, Sperling, Roehl, Harris & Sisk in Albuquerque. He has remained there for the past 25 years and is now a partner and director of the firm.

Jim Parker has had a diverse practice. He has participated in cases involving administrative, banking, bankruptcy, corporate, criminal defense, personal injury, professional malpractice, real property, and wills and estates law. In recent years, he has specialized in civil litigation in both the State and Federal courts. His broad expertise in the practice of law, particularly his trial experience, gives him a solid background to serve on the United States District Court, the federal trial court.

Throughout his career, Jim Parker has demonstrated a commitment to justice and the legal system by his participation in a wide variety of professional activities. In addition to performing pro bono legal services for underprivileged individuals, Jim Parker is a member of the American, New Mexico, Texas, and Albuquerque Bar Associations, the American Board of Trial Advocates, the American Judicature Society, the Tenth Circuit Judicial Conference, and the Albuquerque Lawyers Club. He is a past President of the New Mexico Chapter of the American Board of Trial Advocates and is now a National Director of the ABOTA.

He also currently serves on the New Mexico Bar Association Commission on Professionalism, the Joint Liaison Committee of the New Mexico Bar Association and the New Mexico Medical Society, the New Mexico Medical-Legal Malpractice Screening Panel, and the New Mexico State Bar Foundation. He has previously served on the New Mexico Board of Bar Commissioners, the Albuquerque Bar Association Judicial Selection Committee, the New Mexico Supreme Court Task Forces

on Lawyer's Advertising and the Legal Profession, and a variety of other professional committees.

Jim Parker has also engaged in a number of civic activities, including the Albuquerque Goals Committee, the United Way, the United Community Fund, the University of New Mexico Presidential Scholarship Fund, the Rice University Alumni Association, and the University of Texas Law School Association. His activities on behalf of his profession and his community demonstrate Jim Parker's dedication to service.

For the past 27 years Jim Parker has been married to Florence Parker. Mrs. Parker is self-employed as a fashion coordinator. The Parkers have two children, Roger, the president of an oil and gas development company in Denver, and Pamela, a graduate student at Wake Forest University.

Mr. Chairman, I have listed the qualifications and experience of Jim Parker, but this is not the sum of the man. I have known him for many years. He is an excellent attorney, an exemplary citizen, and a man of integrity. He is a family man who has his feet well-planted on the ground and who is guided by common sense. The broad-based support from the legal community for Jim Parker's appointment is a tribute to his qualifications.

I am confident that Jim Parker will prove to be an excellent addition to our Federal judiciary. I urge the Committee to act favorably on this nomination.

PREPARED STATEMENT BY SEN. JEFF BINGAMAN

Mr. Chairman, on behalf of myself and my distinguished colleague, Senator Pete Domenici, it is with great pride and pleasure that I introduce to the members of the Judiciary Committee, Mr. James A. Parker of Albuquerque, New Mexico, nominee for the office of United States District Judge for the District of New Mexico.

I am proud that the nomination of Jim Parker is before this Committee. It seems to me that it is becoming increasingly difficult to attract to the federal bench the quality of person that this country's judiciary so desperately needs. But in Jim Parker we find a nominee who meets the very highest standards we could hope for on the federal bench.

First, Jim Parker has achieved excellence throughout his professional career—from his graduation as number one in his class at the University of Texas Law School through his service for almost 25 years at the firm of Modrall, Sperling, Roehl, Harris & Sisk, one of New Mexico's largest and most prestigious law firms. Although his practice has been broad in scope (encompassing business, real estate, and other non-litigation matters), his accomplishments as a trial lawyer are renowned in the legal community throughout the state. Jim's peers in the New Mexico Bar will tell you that their respect for his professional competence is without qualification.

Second, Jim is also known as a man of the very highest moral and ethical standards. When difficult ethical dilemmas arise for others, they will seek out the advice of Jim Parker. His reputation for a commitment to high ethical ideals led to his appointment to the New Mexico Supreme Court's Task Force on the Legal Profession, which revised the New Mexico Code of Professional Responsibility.

And third, Jim Parker has consistently demonstrated his care, concern, and commitment to others: to those he works closely with, to the Bar as a whole, to the City of Albuquerque, and to the State of New Mexico.

Those who have worked for him will tell you how his genuine interest in helping others to be everything that they can be has made him an invaluable teacher and mentor for younger, less experienced attorneys.

Other members of the New Mexico State Bar will count for you the numerous occasions in which he has served tirelessly on New Mexico and Albuquerque bar association committees and how the New Mexico Supreme Court has called upon him to serve on its task forces from time to time.

And his fellow citizens in the City of Albuquerque have long appreciated his leadership in the United Way effort, the Albuquerque Goals Committee, the University of New Mexico, and the Chamber of Commerce.

Therefore, it is with great enthusiasm that Senator Domenici and I endorse the nomination of Jim Parker before this Committee today.

Senator LEAHY. If William Dwyer would step forward, accompanied by Senator Evans and Senator Adams, who are here to introduce him.

Mr. Dwyer, I should note that both Senator Evans and Senator Adams have spoken to me about having you here before this committee, and have told me of the backlog of cases back in Washington State. Both have spoken very highly of your qualifications. I do not mean to be stepping into whatever speech they may make on your behalf, but I knew it was really—we all know what is going on. The way we meet around here is, usually, if there is a vote going on, a Senator will grab you when you are down there voting, not to lobby you on how you are going to vote, but to talk about other matters, as both Senator Evans and Senator Adams did. But I knew that it was really important when, just barely, the chickens were awakening at my farm in Vermont, and I get a call from Senator Adams who was working off a 3-hour time change at that.

And he threatened to keep getting me out of bed every morning, at that time, if we did not get this hearing going, and then went into, of course, a discussion about how important the backlog was.

Senator Evans, we will start with you, first, sir.

STATEMENTS OF A PANEL CONSISTING OF HON. DANIEL J. EVANS AND HON. BROCK ADAMS, SENATORS IN CONGRESS FROM THE STATE OF WASHINGTON

Senator EVANS. Thank you, Mr. Chairman, Senator Specter, Senator Humphrey.

It is a delight, in the truest sense of the word, for me to join with my colleague Senator Adams, to introduce to you William Dwyer, an exceptional nominee, a personal long-time friend, and a man who will be an outstanding Federal Judge.

And I would say, Mr. Chairman, it is about time. We have had a vacancy in the State of Washington for more than a year. Judge Donald Voorhees, who had accepted senior status, and then become ill, has not been able to take any cases during the last year. Combined with a new announcement of the presiding judge, that he will go on senior status on September 30 of this year, it means that we are faced with an extraordinary backlog in the Western Washington District Court.

Now, we need to have a new sitting judge at the earliest possible moment. I suspect all members of the committee, Mr. Chairman, are familiar with the history of this nomination, and I do not intend to spend time today recapitulating that story.

Suffice it to say, he has the rare privilege, I suppose, of having been nominated twice by the President of the United States, once last year with his nomination not having time to go through before the adjournment of Congress, and once again this year, nominated to be a Federal Judge to serve in the District Court of Western Washington, in the State of Washington. The President could have nominated no finer individual.

I realize that members of the committee, and staff, are busily preparing now for hearings on Judge Bork which begin next week. I suspect a good part of that preparation has been spent thinking about the Senate's role in the judicial selection process, and how individual Senators should evaluate nominees.

Well, first, I think we do pay some attention to the bar association. Bill Dwyer was rated "exceptionally well qualified" by the American Bar Association, their highest recommendation.

But we each develop our own formulas for determination. We give different weight to different factors. Yet my guess is that the vast majority of Senators are most concerned about a candidate's integrity, his sense of fairness, and legal ability. In each of these three categories, Bill Dwyer rates an "A" plus.

But Bill Dwyer merits the unanimous support of the members of this committee, and the Senate, for reasons which in some way transcend the fact that he is bright and honest, and fair.

He would bring such moral courage, and enlightened wisdom to the bench, that all those who sit in judgment before him, no matter how unpopular, would receive just treatment.

The committee apparently will receive testimony from witnesses who oppose the nominee because, as I infer from their letters and public statements, he is somehow tolerant of child pornography.

They, or the groups they represent, have undertaken a mean-spirited and vicious campaign against Mr. Dwyer which I find reprehensible and unconscionable.

At least one editorial writer in the "Seattle Times" has defined the challenge to Mr. Dwyer as a "smear campaign." Why? Because their allegations are founded on distortion and fantasy rather than on fact.

I will let Mr. Dwyer and some of the other witnesses explain to you, in their words, what his role was in advising the board of directors of the Seattle Public Library with respect to the book "Show Me."

What I will provide is information that Mr. Dwyer is probably too modest to provide for himself. Those who oppose Mr. Dwyer on these above grounds, would do well to listen to the testimony of a witness who will appear here, shortly, on Mr. Dwyer's behalf, a fellow lawyer, and a parent.

In the black notebook I have with me, Mr. Chairman, are dozens of letters and editorials. The editorials praise Mr. Dwyer in the most glowing terms. I suspect Senator Adams and I wish we could do half as well in terms of the encomiums received from paper after paper in the State of Washington.

The letters are from people in the legal profession, and outside the legal profession, who have nothing but the highest praise for this nominee. They are letters from Democrats, Independents, Republicans, letters from community leaders and top corporate officials. There are letters from bar associations and law professors. In fact, 28 of those law professors at the University of Washington and the dean of the Law School have said Mr. Dwyer is the very best qualified person in Washington to be appointed to a Federal trial court.

All these letters have one thing in common: they express the sincere desire that Bill Dwyer be appointed to the Federal bench.

Mr. Chairman, I would like to have the contents of the notebook included in the hearing record and be made available for the committee's activities. I urge, in the most emphatic way, that the committee act promptly to bring the saga of this nomination to a close and support Mr. Dwyer's nomination, enthusiastically, and unani-

mously. Justice delayed is justice denied, and the people of the State of Washington need this man on the bench at the earliest possible date, not just to clear up the backlog which we face, but to provide in the very highest and best sense true justice for the people who will appear before him.

Senator LEAHY. Thank you very much. Incidentally, the book will be entered in the record.

[The notebook follows:]

MATERIALS RE NOMINATION OF WILLIAM L. DWYER U. S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON

A. CHRONOLOGY

B. BIOGRAPHICAL SUMMARY AND SAMPLING OF CASES

C. LETTERS FROM SENATORS EVANS AND GORTON TO ATTORNEY GENERAL

D. BAR ASSOCIATION RESOLUTIONS

E. EDITORIALS

F. NEWSPAPER AND MAGAZINE ARTICLES

G. SENATOR GORTON'S LETTER TO CONSTITUENTS RE MANION VOTE AND DWYER NOMINATION

H. LETTERS FROM LAW ENFORCEMENT OFFICIALS, LAWYERS, CIVIC LEADERS, AND OTHERS

1. King County Prosecuting Attorney Norm Maleng
2. Seattle Chief of Police Patrick Fitzsimons
3. Dean John R. Price and Faculty Members, University of Washington School of Law
4. Chief Judge Jack P. Scholfield, Court of Appeals, State of Washington
5. Joel Pritchard
6. John D. Spellman
7. Alfred J. Schweppe
8. Edward E. Carlson
9. Harvey L. Lipton
10. William H. Gates
11. Paul W. Steere
12. Robert R. Redman
13. F. Lee Campbell
14. Patrick C. Comfort
15. J. A. Vander Stoep
16. John E. Heath, Jr.
17. Paul C. Gibbs
18. Richard E. Williams
19. James R. Ellis
20. J. G. Cairns, Jr.
21. Charles Z. Smith
22. William R. Hesse
23. Bruce M. Pym
24. William E. Wall
25. Gerald Grinstein
26. David C. Crosby
27. Joshua Green III
28. LeConie Stiles Jr.
29. Edward M. Lane
30. Daniel C. Blom
31. John F. Hansler

I. SEATTLE PUBLIC LIBRARY STATEMENT

CHRONOLOGY RE VACANCY ON U.S. DISTRICT COURT BENCH, WESTERN DISTRICT OF WASHINGTON, AS OF MARCH 2, 1987

January 22, 1986	Judge Donald L. Voorhees writes to President advising of intent to take senior status.
March 4, 1986	Senators Gorton and Evans write to Attorney General Meese recommending appointment of William L. Dwyer to fill vacancy created by Judge Voorhees's forthcoming retirement. Recommendation is from approved list submitted by Washington State Bar Association.
March-May, 1986	Editorial responses, and letters to Attorney General, supporting nomination.
June 6, 1986	Interviews of Dwyer at Department of Justice, Washington, D.C.
June 16, 1986	Senators Evans and Gorton write to Attorney General urging prompt nomination of Dwyer, referring to needs of District Court bench, and citing support by King County Prosecuting Attorney, Seattle Chief of Police, WSBA Board of Governors, civic leaders, the media, and the bench and bar: "This is one of those rare situations in which the community is keenly aware of a judicial nomination and overwhelmingly supports it."
Late June, 1986	Senator Gorton concludes that officials in Department of Justice are blocking nomination; when asked by Administration on June 26 to vote for a nominee to the Seventh Circuit Court of Appeals, states that he will not do so unless Administration goes forward with Dwyer nomination; Administration agrees to do that.
Summer, 1986	Processing of nomination; clearance by FBI; rating investigation by ABA.
September 15, 1986	Judge Voorhees falls ill and is obliged to cease trying cases.
September 25, 1986	ABA rates Dwyer as "exceptionally well qualified" — highest rating.
September 26, 1986	President Reagan telephones Dwyer to advise of nomination and thanks him for willingness to serve.
Late September, 1986	White House sends nomination to Senate.
October 10, 1986	Democrats on Senate Judiciary Committee decline to waive rule requiring four-week p riod in committee; Senate adjourns a few days later.
October 17, 1986	Senator Gorto ffice announces that White House and Justice Departn officials have confirmed that they will resubmit Dwyer nation in 1987 if requested by the Senator.
November 28, 1986	Senator Evans writes to Attorney General Meese asking Administration to renew the nomination promptly when 100th Congress convenes in January.
December 1, 1986	Judge Voorhees retires to senior status.

B

WILLIAM L. DWYER

PERSONAL: Born March 26, 1929, at Olympia, Washington; married to Vasiliki Dwyer since 1952; three children (Joanne, b. 1961; Anthony, b. 1962; Charles, b. 1967).

EDUCATION: Queen Anne High School, Seattle, 1946; B.S. in Law, University of Washington, 1951 (Board of Editors, Washington Law Review); LL.B., New York University, 1953.

MILITARY SERVICE: U.S. Army, 1953-56 (four months as infantry private, three years as officer in Judge Advocate General's Corps including two years of duty at Frankfurt, Germany).

BAR ASSOCIATION SERVICE: Member, Board of Governors, Washington State Bar Association (1982-85); President (1979-80) and trustee of Seattle-King County Bar Association; past chairman of Court Congestion Committee and Long Range Planning Committee, SKCBA; chairman of Washington State Bar Association Special Commission to Study the State Antitrust Laws, 1981-82; past chairman of the Lawyer Delegates, W.D. Wash., to the Ninth Circuit Judicial Conference; chairman of Board of Governors committee on mandatory skills training for newly admitted lawyers, 1984-85; Fellow, American College of Trial Lawyers; Fellow, American Bar Foundation.

Helped originate programs including Local Rule CR 39.1, W.D. Wash., providing for mediation of civil cases; Seattle-King County Volunteer Legal Services program; and RCW 4.84.185, allowing assessment of attorney fees where claim or defense asserted without reasonable cause. Frequent service as mediator and arbitrator.

TEACHING: Designed and taught course entitled History and Philosophy of Litigation as Adjunct Professor at University of Washington School of Law, 1982; lecturer at CLE programs sponsored by Practising Law Institute, Washington State Bar Association, Washington State Trial Lawyers Association, University of Puget Sound, University of Washington, and National Institute for Trial Advocacy; chairman for two years of Washington State Bar Association Committee on Continuing Legal Education.

LAW PRACTICE: Formed present firm as Culp & Dwyer in 1957; now Culp, Dwyer, Guterson & Grader, with about forty lawyers. Continuous practice since with trials in many fields including torts, contracts, criminal law, antitrust, professional sports, constitutional law, construction, and domestic relations.

AWARDS:	American Bar Association Gavel Award; Seattle-King County Bar Association, Helen M. Geisness Distinguished Service Award; Washington Law Review first Outstanding Achievement Award; Governor's Award for Writers, State of Washington.	
FAMILY:	Vasiliki (wife):	B.A. in French (1958), M.A. in Romance Languages (1959), University of Washington; member of scholastic honorary Phi Sigma Iota; volunteer worker at schools and libraries.
	Joanne (daughter):	Graduated with B.A. in Government from Connecticut College, New London, Connecticut, May 1985.
	Anthony (son):	Student, Shoreline Community College, and manager of family-owned apartment building in Seattle.
	Charles (son):	Student at Lewis and Clark College, Portland, Oregon.
RECREATION:	Hiking, tennis, running, reading, and travel.	

SAMPLING OF CASES - WILLIAM L. DWYER

Among the cases handled by Mr. Dwyer have been the following:

State of Washington v. American League (breach of contract suit leading to award of major league baseball franchise);

Labbee v. Wm. Wrigley, Jr. Co. (antitrust class action recovering $13.5 million for mint farmers);

King County v. Donald M. Drake Company (damages recovery of $12 million for breach of stadium construction contract);

Reid Brothers Logging Company v. Ketchikan Pulp Company (recovery of $10 million for loggers and mills damaged by pulp companies' antitrust violations);

Golob and Sons, Inc. v. Schaake Packing Company (recovery of $4.5 million plus property acquisitions for cattle feeders against meat packing companies);

State of Washington v. United Dairymen's Association (class action recovery for school districts and other public entities);

MacLean v. First Northwest Industries (defense of SuperSonics basketball club against class action);

Rouse v. Peoples Leasing Company (defense of Peoples Bank affiliate against class action);

Burns v. Sterling (defense of national motion picture distributors against antitrust suit);

In re Krogh (reinstatement of lawyer disbarred during Nixon Administration);

Goldmark v. Canwell (libel verdict for noted state legislator);

State v. Dixon (acquittal of Black Panther captain in pro bono defense);

Rabe v. Washington (U.S. Supreme Court reversal of motion picture industry decision);

Nelson v. Granat (preserving moorage spaces for houseboats and drafting new Seattle floating homes ordinance); and

Parents in Arms (representation pro bono of parents' group seeking improved legal protection for children).

United States Senate

WASHINGTON, D.C. 20510

C

March 4, 1986

The Honorable Edwin Meese III
Attorney General of the United States
Department of Justice
Constitution Avenue and Tenth Street, N.W.
Washington, D.C. 20530

Dear Ed:

On January 22 of this year, federal district court judge Donald Voorhees wrote to the President informing him of his desire to take senior status. The effective date of this change will be the date when his successor is sworn in.

In planning for the vacancy created by Judge Voorhees going senior, we have followed the procedure we've used in the past to propose people of the highest caliber for such vacancies.

We believe that nominees for federal district court judgeships must be among the finest legal minds in the state, must be subject to and receive the approval of the Washington State and Federal Bar Associations, and must be outstanding citizens.

That bar review process has been completed, and we would like to submit to you the name of William L. Dwyer of Seattle for this federal district court judgeship appointment. Bill Dwyer has the full support of the joint committee and ourselves and will be an outstanding judge. We wholeheartedly and enthusiastically endorse his nomination. We have enclosed biographical information on Bill Dwyer and would be glad to answer any questions you might have.

Thank you for your consideration.

Sincerely,

SLADE GORTON
United States Senator

DANIEL J. EVANS
United States Senator

Enclosures

United States Senate

WASHINGTON, D.C. 20510

June 16, 1986

The Honorable Edwin Meese III
Department of Justice
10th Street & Constitution Avenue N.W.
Washington, D.C. 20530

Dear Ed:

Re: U.S. District Court -
Western District of Washington

More than three months have gone by since we sent you on March 4, 1986, our recommendation that William L. Dwyer be appointed as successor to Judge Donald S. Voorhees of the United States District Court for the Western District of Washington. There has been a remarkably strong favorable response to Mr. Dwyer's proposed nomination from the bench, the bar, the media, the public, and our state's Congressional delegation. We are writing now to urge you to take favorable action on this nomination at the earliest possible date. The sooner this position is filled, the greater will be the beneficial effects on the Court's ability to handle a heavy caseload in the District.

We know that you have Mr. Dwyer's resume, which summarizes his outstanding qualifications, and that your staff at the Department of Justice interviewed him on June 6, 1986. Beyond that, it is important that all concerned understand the enthusiasm with which this potential appointment has been greeted in the State of Washington. We are dealing here with a lawyer of the highest reputation, who has served as president of the Seattle-King County Bar Association, member of the Board of Governors of the Washington State Bar Association, and fellow of the American College of Trial Lawyers, and who has won a number of awards for his service to the public and the legal profession.

The response to our recommendation may be summarized as follows:

The Bench. The District Court judges in the Western District of Washington, and the Ninth Circuit Court of Appeals judges from the State of Washington, are solidly in favor of Mr. Dwyer's appointment. The state court judiciary is also

supportive, as exemplified by the recent letter to you from Chief Judge Scholfield of the Washington Court of Appeals, Division I.

Law Enforcement. King County Prosecuting Attorney Norm Maleng, a leading Republican in the State, and Seattle Chief of Police Patrick Fitzsimons, the highly respected police chief of the state's largest city, have written to you in support of the nomination. Mr. Maleng states that "Senators Gorton and Evans could not have selected a better person to recommend to the President. His nomination will be greeted with enthusiastic acclaim by the entire legal community."

Washington State Bar Association. The Board of Governors of the WSBA, to which all 13,000 lawyers in the state belong, has unanimously adopted a resolution urging Mr. Dwyer's appointment and stating that he is known to the Board "to be a person of the highest integrity and to possess the unquestioned competence, ability, and character which are essential attributes for service in the position for which he has been recommended. Mr. Dwyer's qualifications are impressive and his appointment and confirmation would serve the needs of the judiciary and the public."

Newspaper and Television Editorials. The Seattle Times, the largest paper in the State of Washington, has written in an editorial that our recommendation is "very good news" and that "by their nomination of Dwyer, Gorton and Evans have elevated the process of judicial appointment to a new, high level." In the same editorial, the Times described the potential nominee as a "distinguished Seattle attorney" who is "in the midst of a remarkable career in which he has tried dozens of major cases." Times Associate Editor Richard Larsen wrote in a later column that "no candidate could be better suited in legal intellect and temperament for the bench than Dwyer." The Journal-American, published in the largely Republican city of Bellevue, stated in an editorial that "Dwyer is an outstanding lawyer who will make an outstanding judge." The Weekly, an influential newspaper published in Seattle, wrote that our recommendation "brought universal praise for the senators and Dwyer. ... his reputation for fairness and courage is legendary ..." KIRO Television, the CBS affiliate in Seattle, carried an editorial by Louis Guzzo describing our choice as "a man of enormous integrity and skill" and saying that "the federal bench will be a much better place with the likes of Bill Dwyer sitting there." In addition to these editorials, the news articles reporting the proposed nomination and summarizing Mr. Dwyer's career and qualifications have been highly favorable.

University of Washington School of Law. Dean John R. Price and twenty-eight professors at the University of Washington School of Law have written to you expressing their strong support. They state: "We are among the very large group of citizens who believe Mr. Dwyer is the very best qualified person in Washington to be appointed to a federal trial court. Indeed, we feel extremely fortunate that a lawyer with such exceptional energy, intellect, and integrity is willing to give up a very successful private practice to accept an appointment to the bench."

Leading Republicans and Other Leading Citizens. Among the leading citizens who have written in support of Mr. Dwyer's nomination, the great majority of whom are Republicans, are former Governor John D. Spellman; former six-term Congressman Joel Pritchard; the four most recent presidents of the Washington State Bar Association (Patrick C. Comfort of Tacoma, F. Lee Campbell of Seattle, Robert R. Redman of Yakima, and Paul W. Steere of Seattle); William H. Gates, who is a recent past president of the National Conference of Bar Presidents and currently is President-elect of the WSBA; James A. Vander Stoep of Chehalis, John E. Heath of Spokane, and Paul C. Gibbs of Seattle, all former members of the Board of Governors of the WSBA; Richard E. Williams of Perkins Coie, the state's largest law firm; Alfred J. Schweppe, who at ninety is a lifelong conservative Republican and one of the state's foremost lawyers; Edward E. Carlson, Chairman Emeritus of UAL, Inc.; James R. Ellis, perhaps Washington State's best-known private citizen for his civic leadership; Charles Z. Smith, a leading citizen in our Black community and a national Baptist Church officer; William R. Hesse, past president of the American Association of Advertising Agencies; Bruce M. Pym of Graham & Dunn, a recent past president of the Seattle-King County Bar Association; James G. Cairns, Jr., immediate past president of the American Bankers Association and present Chairman of the Board and CEO of First Oklahoma Bancorporation; Egil Krogh, now a partner of Mr. Dwyer's, who served on the White House staff and as Undersecretary of Transportation in the Nixon Administration; Harvey L. Lipton, Vice-President and General Counsel of The Hearst Corporation; William E. Wall, Chairman of the Board and President of the Kansas Power and Light Company; Gerald Grinstein, Chairman of the Board and CEO of Western Airlines; Daniel C. Blom of the Ryan, Swanson firm in Seattle; David Crosby of Council and Crosby, Juneau, Alaska; and Ludwig Lobe, senior partner of Laventhol & Horwath, CPA's, Seattle.

When you read these letters, and others that have come in, you will see that they are not routine statements. Rather, they are heartfelt expressions of support and gratification from

citizens responding to an outstanding person who will make an outstanding judge.

Congressional Delegation. Mr. Dwyer has the firm support of all members of our state's delegation of both parties.

In summary, this is one of those rare situations in which the community is keenly aware of a judicial nomination and overwhelmingly supports it. The Administration has an opportunity to make a first-rate addition to the federal bench by appointing Bill Dwyer to it. We urge you to go forward expeditiously so that he can be sworn in, and undertake the duties of office, as early as possible this year.

Sincerely,

SLADE GORTON
United States Senator

DANIEL J. EVANS
United States Senator

D

WASHINGTON STATE BAR ASSOCIATION
505 MADISON ST., SEATTLE, WASHINGTON 98104
(206) 622-6054

JOHN J. MICHALIK
EXECUTIVE DIRECTOR

May 20, 1986

Honorable Edwin Meese III
Attorney General of the United States
United States Department of Justice
Washington, D.C. 20530

Dear Attorney General Meese:

As you are aware, United States Senators Slade Gorton and Daniel Evans have recommended that Seattle attorney William L. Dwyer be appointed a Judge of the United States District Court for the Western District of Washington, to succeed the Honorable Donald Voorhees upon Judge Voorhees assuming Senior Status.

In that connection, I enclose the original of a Resolution approved and adopted by the Board of Governors of the Washington State Bar Association supporting, unanimously and without reservation, the appointment and confirmation of Mr. Dwyer as a Judge of the United States District Court. In the opinion of the Board of Governors, the appointment of Mr. Dwyer would be an extremely positive step in serving the needs of the Judiciary and the public in the Western District of Washington.

Very truly yours,

John J. Michalik

JJM/JD
Enclosure

cc: Honorable Slade Gorton
Honorable Daniel J. Evans
Patrick C. Comfort

RESOLUTION

The Board of Governors of the Washington State Bar Association has been advised that United States Senators Slade Gorton and Daniel Evans have jointly recommended to the President of the United States that William L. Dwyer be appointed a Judge of the United States District Court for the Western District of Washington.

William L. Dwyer is known to the members of the Board of Governors of the Washington State Bar Association to be a person of the highest integrity and to possess the unquestioned competence, ability and character which are essential attributes for service in the position for which he has been recommended. Mr. Dwyer's qualifications are impressive and his appointment and confirmation would serve the needs of the Judiciary and the public.

ACCORDINGLY, the Board of Governors of the Washington State Bar Association supports without reservation the appointment and confirmation of William L. Dwyer as a Judge of the United States District Court for the Western District of Washington.

Dated This 16TH day of MAY, 1986

Patrick C Comfort

Patrick C. Comfort, President
Washington State Bar Association

FEDERAL BAR ASSOCIATION OF THE WESTERN DISTRICT OF WASHINGTON

c/o Richard M. Clinton
Bogle & Gates
2300 Bank of California Center
Seattle, Washington 98164
(206) 682-5151

April 28, 1987

Hon. Edwin Meese, III
Attorney General
Department of Justice
10th Street and
Constitution Avenue N.W.
Washington, D.C. 20530

Dear Mr. Attorney General:

Enclosed is a resolution of the Board of Trustees of the Federal Bar Association for the Western District of Washington which recommends that immediate action be taken on the appointment of William L. Dwyer as a Federal District Judge for the Western District of Washington. The membership of the Federal Bar Association for the Western District of Washington is composed of approximately 550 lawyers who practice before the Federal District Court.

The Board of Trustees believes that the enclosed resolution expresses the overwhelming sentiment of the federal practitioners in the Western District of Washington. We hope that prompt action will be taken on the appointment of William L. Dwyer as a Federal District Judge for the Western District of Washington.

Very truly yours,

Richard M. Clinton

Richard M. Clinton
President, Federal
Bar Association

cc: Hon. Daniel J. Evans
Hon. Brock Adams

bcc: William L. Dwyer, Esq.✓

RESOLUTION BY FEDERAL BAR ASSOCIATION

OF THE WESTERN DISTRICT OF WASHINGTON

WHEREAS, the calendar congestion caused by a shortage of judges in the U.S. District Court for the Western District of Washington has become substantially worse over the past six months as a result of the illness and convalescence of Judge Donald L. Voorhees, who retired to senior status last year; and

WHEREAS, delays in the processing of cases have caused and are causing injustice and unwarranted expense to many litigants in the District; and

WHEREAS, President Reagan nominated William L. Dwyer for appointment as Judge Voorhees' successor on September 26, 1986, but the Senate adjourned for the year a few days later without acting on the nomination; and

WHEREAS, Mr. Dwyer has been rated "exceptionally well qualified," the highest rating, by the American Bar Association, and his nomination has been welcomed enthusiastically by the bench, the bar, civic and law enforcement leaders, the media, and the community at large; and

WHEREAS, Mr. Dwyer's appointment should go forward without further delay in the interest of the fair, impartial, and effective administration of justice in this District; NOW, THEREFORE,

IT IS RESOLVED that the Board of Trustees of the Federal Bar Association of the Western District of Washington strongly urges the Attorney General of the United States, and the President, to resubmit forthwith

the nomination of William L. Dwyer to fill the vacancy on the U.S. District Court bench in the Western District of Washington, and urges the Senate of the United States to confirm the nomination promptly thereafter, so that Mr. Dwyer can begin work as a judge of the Court at the earliest possible date.

DATED this 24th day of April, 1987.

Richard M. Clinton

James A. Vander Stoep

Edward W. Pettigrew

J. Ronald Sim

Evan L. Schwab

Ronald M. Gould

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April 27, 1987

Hon. Edwin Meese, III
Attorney General
Department of Justice
10th Street and Constitution Avenue N.W.
Washington, D.C. 10530

Re: U.S. District Court,
Western District of Washington

Dear Mr. Attorney General:

The purpose of this letter is to respectfully request, on behalf of the Seattle-King County Bar Association, that you and the President proceed to renominate William L. Dwyer of Seattle, Washington, to fill the vacancy on the United States District Court bench in the Western District of Washington.

President Reagan nominated Mr. Dwyer for this position last September. The Senate adjourned soon afterward without taking up the nomination, it expired at the end of the year and a renomination is now necessary.

Mr. Dwyer is held in the highest regard in the State of Washington and will be an outstanding judge. As you may know, he is rated as exceptionally well qualified by the American Bar Association. His appointment is strongly supported by the legal profession, the judiciary, law enforcement officials, and the community as a whole.

The Hon. Donald L. Voorhees, who has retired to senior status on our District Court bench, has been unable to try cases for more than half a year. As a result, congestion and delay in the District Court have increased, and citizens having business with the Court, especially in civil cases, are suffering the consequences. The prompt renomination of Mr. Dwyer is vitally needed to alleviate that problem.

Senator Evans, former Senator Gorton, and Senator Adams all support Mr. Dwyer's appointment. We understand that Senator Evans requested

last year that the renomination be sent to the Senate in January. For the sake of the public and the court system, we respectfully ask that the Administration to proceed with this appointment.

Respectfully,

SEATTLE-KING COUNTY
BAR ASSOCIATION

Thomas S. Zilly
President

TSZ/cl
cc: Hon. Daniel J. Evans
Hon. Brock Adams

bcc: William L. Dwyer
Charles S. Burdell
Helen Pulsifer

A 14 The Seattle Times Thursday, March 6, 1986

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EDITORIALS

VOORHEES' SUCCESSOR

Dwyer startling choice for federal judgeship

THE nomination of William Dwyer, a distinguished Seattle attorney, to succeed U.S. District Court Judge Donald Voorhees not only is startling news — it's very good news.

It's startling because there'd been no widespread awareness that the able Voorhees, 69, had asked several weeks ago to move to "senior status," in which he would continue to serve but not be available for the court's day-to-day workload.

William Dwyer

Many also are surprised that Dwyer, a dynamic attorney of 56, principal partner in a highly successful law practice, would be inclined to turn to service on the federal bench. Dwyer, also a teacher and author, is in the midst of a remarkable career in which he has tried dozens of major cases ranging from libel and criminal-defense to antitrust and civil-liberties matters.

But Dwyer quietly, reverently explains the esteem he holds for the American judicial system: "I admire our system greatly, and I've always felt I might be able to contribute in this way. I would like very much to try."

Sen. Slade Gorton, who with Sen. Dan Evans submitted Dwyer's name to the Justice Department (the first in a series of steps leading to a presidential appointment), said Dwyer's qualifications had been examined carefully by men and women inside and outside the Washington legal profession, people across the political spectrum.

Said Gorton: "They all felt — overwhelmingly — that he is a superlative candidate."

There was another startling element to the choice: The White House is Republican, and so are Gorton and Evans. But Dwyer is seen more as a Democrat, certainly not a Republican.

By their nomination of Dwyer, Gorton and Evans have elevated the process of judicial appointment to a new, high level recognizing that, in choosing a federal judge for a lifetime appointment, it's not the political track record that counts. It's legal and judicial quality.

Dwyer Good Choice for Judge

If President Reagan has his heart set on appointment of a conservative judiciary, he will be disappointed at the nomination of Bill Dwyer as federal judge. Everyone else should rejoice, however, for Dwyer is an outstanding lawyer who will make an outstanding judge.

Sens. Slade Gorton and Dan Evans, who nominated Dwyer, know this. Otherwise, as Republicans, they would not have nominated a Democrat. Their selection may not be popular with Attorney General Edwin Meese III or a few conservatives. But others who recognize merit regardless of political party will be pleased.

Dwyer is senior partner in the Seattle law firm of Culp Dwyer Guterson and Grader, formed in 1957 as Culp and Dwyer. He grew up in Seattle and was graduated from the University of Washington Law School.

Presuming that Meese forwards the nomination, it must be approved by the Senate. Dwyer would succeed Donald Voorhees, who has asked for reassignment as senior judge. In that position Voorhees would continue on the bench but with a reduced caseload. This would help the other judges of the Western Washington U.S. District Court—Walter McGovern, Carolyn Dimmick, Barbara Rothstein and Jack Coughenour in Seattle, and Jack Tanner in Tacoma—although Voorhees might hear cases in other federal jurisdictions, too.

Dwyer's ascension to the bench probably won't happen overnight. Sens. Evans and Gorton recommended the appointment of Robert Bryan of Bremerton for a new District Court position in Tacoma last year. That nomination still awaits final Senate approval.

In their letter of nomination to Meese, Gorton and Evans said they are following their customary procedure of proposing people of the highest caliber for such vacancies.

With Dwyer, they have succeeded.

Jeers and Cheers

Good Judgement: News that Senators Gorton and Evans had recommended Seattle attorney William Dwyer for a federal judgeship brought universal praise for the senators and Dwyer. It was a rare instance of merit overriding partisanship Dwyer, while an admirer of Gorton and an ally in past legal battles, is a known Democrat, and such judgeships are enormous political plums. But people have been pushing Dwyer for years to be a judge, since his reputation for fairness and courage is legendary, and the federal judges themselves urged an outstanding replacement for retiring Judge Donald Voorhees. It's also an instance where the right thing to do was good politics as well. Gorton's nonpartisan courage will score him many points with the Seattle legal community, out of which Brock Adams, Gorton's likely opponent this year, draws most of his stength.

A 6 The Seattle Times Wednesday, July 2, 1986

EDITORIALS

MANION BATTLE

Sen. Gorton's vote needs a cool look

SEN. Slade Gorton's "yes" vote on the confirmation of Daniel Manion of Indiana to a seat on the 7th U.S. Circuit Court of Appeals has the political pot boiling — sometimes splattering — in Washington state during this congressional recess. Gorton's action deserves more light and less heat.

No sooner had Gorton cast that vote, and in the process helped give Manion a tentative 48-46 approval by the Senate, than Democrat Brock Adams, Gorton's election challenger, blasted the Republican incumbent: Gorton's support for Manion "showed a lack of integrity."

By Gorton's own admission, Manion, a South Bend lawyer with an undistinguished court career, is "barely qualified" for the high post. The Indianan was attacked by liberals, even moderates, as an ultraconservative. He is the son of Clarence Manion, a onetime member of the John Birch Society and an early oracle of the far right.

All in all, an unappetizing nominee to be a federal judge — especially in the view of Gorton, who cares about judicial quality. Yet, in the moments preceding the dramatic vote in the Senate, Gorton apparently decided to switch from his intended "no" and support Manion, the Reagan White House's nominee. Why?

He says he received a phone call from the White House, promising that a vote for Manion would unlock his nomination of William Dwyer to be a U.S. district judge in Western Washington.

Dwyer is a lawyer with a gleaming reputation. But his nomination has been bombarded by the far right: He was too liberal for them. So the Justice Department had a "hold" on his nomination . . . until Gorton voted the way he did.

Today, as Gorton is attacked by home-state liberals, some facts of life should be coolly considered. He correctly cited "Senate prerogative" in his vote. It's his prerogative to nominate Dwyer. It was the Indiana senators' prerogative to nominate their man. Washington Democrats should recall that "Senate prerogative" prevailed through the decades in which Warren Magnuson and Henry Jackson voted on judgeships in the Senate.

Gorton's lone vote got all the attention, but there were switches galore in the Senate, and it's likely that Manion would have been approved without Gorton: Vice President Bush would have provided the "yes" vote to break a 47-47 tie.

Further, the battle isn't over yet. Manion's nomination is expected to come up again in the Senate on a reconsideration vote after the holiday recess.

But Gorton and this region apparently have come away winners — provided the Reagan administration decently delivers by sending Dwyer's name along to the Senate.

Smear campaign

A small but noisy group calling itself Washington Together Against Pornography is trying to smear a worthy nominee to the federal judiciary, William Dwyer. Dwyer, near as we can tell from the group's fuzzy logic, is accused of being soft on pornography because, as a lawyer asked to give advice, he urged the library to take a stand for free speech.

Last year the Seattle Public Library was caught in an uproar over its circulation of "Show Me!," a sex education manual found in numerous other libraries. Dwyer and other sensible people advised the library to keep the book because it did not break any anti-pornography laws and because the library's autonomy in selecting materials must be upheld. Somehow, in the eyes of WTAP, that makes Dwyer a fellow traveler with pornographers. That organization has launched a petition campaign to block Dwyer's nomination to Seattle's federal court.

The charge, of course, is nonsense; a big lie that has shock value but no substance. King County Prosecutor Norm Maleng, a strong supporter of Dwyer's nomination, has said that Dwyer "has a tough-minded view with respect to physical and sexual abuse."

Dwyer is an outstanding lawyer, respected by client and legal foe alike. It is entirely regrettable that Dwyer's nomination has been marred by controversy that has nothing to do with his qualifications. First his candidacy was overshadowed by a national uproar over a vote swap made by Sen. Slade Gorton to free the nomination. Now the nomination risks being tarred again, this time by sniping from those twisting the issue in order to gain publicity for their own cause.

WTAP's spurious charges should not delay action on the nomination any longer. The White House should swiftly send William Dwyer's name to the Senate for confirmation.

9/86 Seattle P-I

Seattle P.I. 10/27/86

Kennedy's swing

In a swing through Seattle to promote Brock Adams' candidacy for the U.S. Senate, Sen. Edward Kennedy, D-Mass., gave a tissue-thin offensive explanation of why Seattle lawyer William Dwyer's nomination to a federal judgeship had been derailed for the year.

Kennedy said the nomination was blocked out of anger toward Sen. Slade Gorton. Republican Gorton, along with Sen. Dan Evans, had nominated Dwyer but had irritated Democrats for switching his vote on a controversial nominee to the U.S. Appeals Court. Kennedy is a member of the Senate Judiciary Committee, where Democrats went out of their way to block Dwyer.

Kennedy said he and his Democratic colleagues would have cleared Dwyer if apprised of Western Washington's overloaded federal court in Seattle. Apart from the fact that Gorton says he did tell Democrats of the problem, it's disingenuous for Kennedy to argue that he cares about Seattle's trouble when he's willing to hurt an outstanding candidate for the judiciary.

Kennedy's own record of judicial nominations is less than perfect. According to the prize-winning book "Common Ground," Kennedy spent years pushing a candidate who had been rated by the American Bar Association as "lacking in intellectual capacity." Even his brother Jack had been reluctant to push the nomination. Ted Kennedy in 1965 withdrew the name of Francis Xavier Morrissey, a former political aide to Ambassador Joseph Kennedy, after it was revealed Morrissey had falsified his credentials.

If Kennedy wanted to settle a score with Gorton by hurting Dwyer, he should have said so. But for him to explain away his misdeed as the fault of Gorton is absurd. If Democrats wanted to do what's right for the judiciary, they should have put aside their disagreements with Gorton and approved the Dwyer nomination.

The Herald

Larry L. Hanson *Publisher* Louis Wein *Editorial Page Editor*

Strong motion for Dwyer

The Herald's opinion

It's good to see Sen. Dan Evans seeking the aid of Senate Republican Leader Bob Dole to convince President Reagan to renominate William Dwyer, a Democrat, to the federal district court bench in Western Washington.

Dwyer's nomination, backed by Evans and then-Sen. Slade Gorton, both Republicans, was stalled to death last year, ironically by Senate Democrats. The Democrats, who were the Senate minority, were piqued at Gorton's flip-flop at the last minute to support Indiana lawyer Daniel Manion for a seat on the 7th U.S. Circuit Court of Appeals based in Chicago. Gorton switched sides on Manion in exchange for the Dwyer nomination.

Ironically, too, Gorton's hasty and very public judge-rolling helped the senator snatch a most unlikely defeat from the jaws of victory last November. Which is to say that freshman Sen. Brock Adams was the unintended and only Democrat who gained anything from Gorton's clumsy trade.

But that was last year. This year, the Democrat-controlled Senate appears very friendly to the Dwyer nomination. Adams' solid support for Dwyer can't hurt.

Dwyer is an outstanding prospect for service on the federal bench. His arrival there would be a real credit to the president. For one thing, Dwyer exhibits the uncommon discipline not to let his political and philosophical inclinations color his reading of the law as a judge. For another, the Western Washington District desperately needs another judge, and one who would enjoy complex economic cases. Dwyer would handle regulatory and antitrust cases efficiently from his first day on the job.

By enlisting Dole's help on behalf of Dwyer, Evans has played the powerful card of the Republican leader's presidential ambitions in 1988. And Dole loves Dwyer country, witness the senator's expressions of delight from his visit last summer to Arch MacDonald's barn here in Snohomish County.

Howard Baker, the White House chief of staff, also should be interested in delivering the Dwyer nomination. That would help rebuild both the president's credibility and the national GOP's standing in the region.

Dole and Baker should consider that in six years of the Reagan presidency the Northwest has received almost nothing from the administration but threats: threats to the environment and public safety from its policies at the Hanford nuclear reservation; and threats to ruin the region's economy by either selling the Bonneville Power Administration or straight-lining its Treasury debt.

It's about time the administration sent out something pleasant for a change. A good start would be William Dwyer on the federal bench.

Post-Intelligencer

3/22/87

The voice of the Northwest since 1863

Publisher: Virgil Fassio
Executive Editor: J.D. Alexander
Editorial Page Editor: Charles J. Dunsire
Managing Editor: Thomas A. Reed
Business Manager: William R. Cobb

Seattle PI 3/22/87

Meese ignores Evans

Sen. Dan Evans will take his case for William Dwyer's nomination to the federal judiciary straight to the White House. Frustrated if not exasperated by Attorney General Edwin Meese's unwillingness to renominate the distinguished Seattle attorney, Evans is going to the top.

We wish him well. Dwyer's nomination last year died when Congress adjourned before the Senate could act. Evans' repeated efforts to discuss the matter with Meese have come to no avail. But with Howard Baker, former Republican Senate majority leader, now the chief of staff, Evans is likely to get a fair hearing, and, we hope, some action.

5/6/87
Seattle Times

DWYER NOMINATION

Federal courts here need help — quickly

BECAUSE of the recent illness of U.S. District Judge Donald L. Voorhees, cases are stacking up in the federal courts of Western Washington, "causing injustice and unwarranted expense" for citizens: Speedy action is needed on the nomination and confirmation of William Dwyer as Voorhees' successor.

That urgent and valid message was contained in a resolution adopted the other day by the lawyers who know the seriousness of the clogged-courts problem — members of the Federal Bar Association of the Western District of Washington. An almost identical action was taken by the Seattle-King County Bar Association.

Both organizations are pleading that Attorney General Edwin Meese and President Reagan quickly resubmit Dwyer's name to the U.S. Senate so that he can be confirmed as the new judge.

Dwyer, who enjoys wide bipartisan support and is rated "exceptionally well qualified" for the post by the American Bar Association, barely missed being confirmed during the 1986 Congress. Now his name must be resubmitted by the attorney general and the White House to the Senate.

Are the congressional Iran-contra hearings so distracting the Reagan administration that other functions are getting bogged down? White House chief of staff Howard Baker says no, executive functions go on. The White House can prove this is true by acting on the Dwyer nomination quickly and sending high-quality help to a troubled federal-court system.

Seattle P-I
6/4/87

Favor from the Gipper

It's tempting to say Sen. Dan Evans should withdraw the nomination of Seattle attorney William Dwyer for a job on the federal bench and give the credit for hiring him to an administration more deserving of credit for a good appointment.

But there are too many cases backed up in federal court, where matters are moving to crisis mode, to follow that course. Justice delayed is justice denied.

This scandal-ridden administration could use a few good appointees whose integrity and qualifications are above reproach. But Dwyer apparently has failed the litmus test for right-wing political leanings — a test that has no place in selecting judges.

Evans has vowed to enlist presidential aspirant Bob Dole and White House chief of staff Howard Baker in the fight to get Dwyer on the bench, going over the heads of recalcitrant Justice Department officials. He also has threatened to oppose any other administration judicial appointments, through Senate filibuster if necessary, until the Dwyer nomination is acted upon.

Evans has certainly done enough favors for Ronald Reagan to deserve to have one returned. But we're not talking about trading personal political favors here: We're talking about the Gipper winning one for everybody for a change.

RETALIATION

Evans gets tough

DAN Evans, who's usually had sort of a Boy Scout/Lone Ranger style in public life, has shown that if necessary, he can play hardball politics in the tough, encrusted old Potomac League.

Miffed that the Justice Department and Reagan White House have stalled for months on the nomination of Seattle's William Dwyer to be the new federal judge in Western Washington, Evans put a "hold" on a group of Reagan (and other senators') nominees to the 9th Circuit Court of Appeals.

That's a rare tactic allowed under old Senate rules. It could entangle the process of those appointments. Evans threatened even more procedural snarls on other appointments if the Dwyer nomination isn't allowed to move forward.

When it was pointed out to Evans that he was suddenly using some of the same old Senate strategems that he has criticized and tried to reform, he delivered a memorable political line: "The longer you run with crocodiles, the longer your teeth become."

Overloaded with cases, the U.S. District Court here desperately needs Dwyer on the bench. In the meantime, justice suffers.

Seattle Times 6/12/87

King Broadcasting Company

Ancil H. Payne
President

EDITORIAL

Dwyer and Gorton Appointments
June 24, 1987

Crass partisan politics is the only reason to make an inferior lawyer a federal judge. There is no reason to block a superior lawyer from becoming a federal judge except partisan politics. The federal judiciary daily draws vital decisions on how we will conduct our lives and run our businesses. The Administration and the Senate have a responsibility to nominate to the federal bench the most competent legal minds available.

Last year we did not believe Daniel Manion met those qualifications, and opposed his appointment. We do believe two local nominees are exceptionally well qualified, and urge their nomination.

William Dwyer, one of Seattle's brightest legal minds, has the support of our legal, business, and social community. Senator Evans has warned he will use crocodile teeth to force Ed Meese and his Justice Department to stand by their earlier promise to favorably report Dwyer's nomination. We commend and encourage Senator Evans in his effort.

Former Senator Slade Gorton is being recommended for appointment to the 9th U.S. Court of Appeals. Here, too, is an opportunity to place in the federal judiciary a person with a keen intellectual mind who also has an outstanding and unusual background as a lawyer, Attorney General, and United States Senator.

One is a Democrat, the other a Republican, although both rise above narrow political ideology. Each would complement the federal court system.

Let us hope petty partisan politics and any narrow, provincial attitudes might, for once, be ignored, enabling these two highly qualified lawyers to serve as federal judges.

333 Dexter Avenue North, P.O. Box 24025, Seattle, WA 98124 206/343-3000

Bremerton, Wash. The Sun
A4 Tuesday, June 30, 1987

Editorials

Evans plays hardball on Dwyer nomination

WILLIAM J. DWYER merits nomination to the Federal District Court in Western Washington. According to a deal worked out between the Reagan administration and former U.S. Sen. Slade Gorton, the Seattle attorney should be on his way to confirmation by now.

But partisan politics has thrown the Dwyer nomination off the tracks. Now Sen. Dan Evans (R-Wash.) is determined to get it back where it belongs — and he's taken a tough stand that should succeed.

Evans has threatened to hold up *all* judicial nominations for the federal 9th Circuit Court of Appeals — an area that stretches over nine Western states — if Dwyer doesn't get the administration's nod. Some might think the senator's actions presumptuous, and he's exercising a senatorial perogative rarely used. But if it stops the monkey business on the Dwyer case, Evans' ploy will have been used appropriately.

The Dwyer saga is a long and complex tale that illustrates how not to appoint federal judges. A liberal, he nonetheless was superbly qualified enough to win the support of the conservative Gorton. But right-wing smear tactics last year tried to link the Seattle attorney with child pornography — and succeeded in stalling his nomination.

It was at that point Gorton made a deal he now undoubtedly regrets. He agreed to back the nomination of the "marginally qualified" Daniel Manion as a judge on the 7th U.S. Circuit Court of Appeals in return for administration support for Dwyer.

Gorton lost his re-election bid in November 1986, in part because the Dwyer-Manion deal tarnished his reputation. Nonetheless, a deal is a deal, or should be. But the administration dropped its support for Dwyer as soon as the 99th Congress ended and Gorton's term of office ended along with it.

Evans has decided he won't play games any more. With one federal judge seriously ill and the 9th Circuit caseload mounting, he has some leverage.

None of this would have happened if the nomination process hadn't become so politicized. But Dwyer's support from two senators of opposing parties should demonstrate his qualification beyond a doubt. One hopes Evans wins this one, and that it sets an example for future nominations.

EDITORIALS

The Seattle Times

AN INDEPENDENT NEWSPAPER

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RESPECT FOR LAW?

'Meeseconduct' harms president and nation

WITH only months remaining for the Reagan administration to turn things around, Attorney General Edwin Meese's offensively arrogant, unprofessional and callioused behavior as chief of the Justice Department threatens to stain the Reagan record in the books of history.

And, as an especially sad legacy of these years, the Pacific Northwest may remember the Reagan-Meese era as a Dark Age that caused years of damage to justice in the federal courts of Western Washington.

The latest example of gross Meeseconduct is the revelation that the attorney general, under investigation for shady dealings with Wedtech, a defense contractor, violated ethics law by privately slipping $80,000 into an investment with a financial consultant linked to Wedtech.

Whatever happened to the American notion that those of highest office owe nothing less than the highest respect for the law? Whatever happened to the notion that the U.S. attorney general in particular, America's chief law-enforcement officer, should set an example of immaculateness?

Let our children know that those ideas haven't disappeared: They still remain America's standards . . . Meese's behavior notwithstanding.

Meanwhile, the Reagan White House and Meese's department continue to stall and stonewall — and thereby infuriate caring citizens in this part of the nation — by withholding the nomination of the respected William Dwyer to be U.S. district judge for Western Washington.

Some petty political snags foiled Dwyer's appointment in the 1986 Congress. Today the most respected voices of Washington and neighboring states — including noted lawyers, public officials, legal associations, and other distinguished organizations — continue to urge Meese and the White House to resubmit the nomination to the Senate.

Republican Sen. Dan Evans has put his political reputation on the line, valiantly trying to force Meese to act on the Dwyer nomination. Still Meese holds out, no doubt heeding the few voices of petty conservative ideologues who don't care about quality of justice. And cases stack up untried in the federal courts here. Justice is delayed; thus justice is denied.

Someone in the White House — maybe the president — should take steps now to salvage the reputation of the Department of Justice and, as part of that, move the Dwyer nomination forward. For the Reagan reputation, there's still time.

Seattle Post-Intelligencer

March 6, 1986

Dwyer in line to be U.S. judge

By Joel Connelly
P-I Washington Correspondent

WASHINGTON — Seattle antitrust attorney William Dwyer was nominated yesterday by Sens. Slade Gorton and Dan Evans to be a federal judge for Western Washington.

Dwyer, 56, has been a central figure in several of Washington's celebrated legal cases, from the Goldmark libel trial in Okanogan County in the early 1960s to the lawsuit against the American League that brought the Mariners to Seattle.

Gorton predicted last night the Dwyer nomination will be accepted by Attorney General Ed Meese, even though the Seattle attorney once battled right-wing groups in court and attended a 1984 fund-raising dinner for Democratic presidential nominee Walter Mondale.

"It is an ancient and inflexible custom of the Congress that federal district court appointments are made upon nomination by a state's senators if they are of the president's party," said Gorton.

Both Meese and his predecessor, William French Smith, have requested that Washington's senators send up a list of three nominees for openings on the federal court from which the administration could choose.

Gorton and Evans, as well as some senators from other states, have turned down the request. Asked what would happen if Meese asked for two more names, Gorton answered: "We would give them William L. Dwyer and William L. Dwyer."

Dwyer, who has resisted friends' suggestions of judicial appointment in the past, said he "decided I would be interested now."

A vacancy will occur on the U.S. District Court bench in Seattle because Judge Donald Voorhees said in January that he would like to take senior status, a form of semiretirement in which judges assume lighter caseloads.

"I felt that this was the time in life to do it," Dwyer said yesterday. "I will be leaving private practice with a sense of fondness and gratitude. I hope to make a real contribution and to bring as much justice to as many cases as I can."

If President Reagan appoints him to the $78,700-a-year, lifetime post, Dwyer would have to be confirmed by the U.S. Senate before beginning his judicial duties.

Dwyer said he anticipates a heavy workload. "We have an outstanding federal bench in Western Washington, and I am honored to be part of it," said Dwyer.

Stimson Bullitt, a former law partner of Voorhees' and a friend of Dwyer's, said of the choice of Dwyer by the two senators: "I think he'll be absolute tops. I could think of no higher compliment than saying Judge Dwyer will be worthy of comparison with Judge Voorhees."

Voorhees was appointed a federal judge by President Nixon in 1974 on the recommendation of the late Sen. Henry M. Jackson. He had been a member of the Seattle law firm of Riddell, Williams, Voorhees, Ivie & Bullitt for 22 years. The Kansas native is a graduate of Harvard Law School.

Voorhees is the only Washington judge ever to be elected to the Federal Judicial Center. Last June, he was awarded the Seattle-King County Bar Association's "Outstanding Judge" award.

The Dwyer nomination, made by Gorton and Evans in a letter yesterday to Meese, followed a review by the Washington State Bar Association.

It climaxes a 25-year friendship and association between Dwyer and Gorton.

In Dwyer's most famous case, the attorney represented John Goldmark, who was a former state representative from Okanogan County, and his wife, Sally, in a libel suit against local right-wing groups. The groups had used Sally Goldmark's past membership in the Communist Party, which she later repudiated, to defeat her husband's re-election bid.

Gorton, a young Republican state legislator, appeared as a witness on behalf of Democrat Goldmark.

"I remember knowing it would give me a whole lot of trouble," said Gorton. "I had never set foot in Okanogan County. John Goldmark had been a constant opponent of mine in the Legislature, and there were sure to be political consequences."

Later, as attorney general, Gorton helped hire Dwyer to represent the state and King County in legal action against the American League after departure of the Seattle Pilots in 1969. The resulting settlement gave Seattle an expansion franchise.

A graduate of the University of Washington and New York University Law School, Dwyer is a partner in the Seattle firm of Culp, Dwyer, Guterson & Grader.

Both Dwyer and Gorton spoke at a tribute dinner for John Goldmark shortly before his death in 1979. In late 1984, Dwyer's book, "The Goldmark Case," recounting the 1963 Okanogan County trial, was published.

After the slayings of John and Sally Goldmarks' son Charles and his family at their Seattle home last Christmas Eve, Dwyer helped organize the Charles and Annie Goldmark Family Foundation.

William Dwyer says he hopes "to make a real contribution and to bring as much justice to as many cases as I can."

Dwyer Nominated for U.S. Judgeship—Gorton, Evans Backing Lawyer

(By Peyton Whitely)

Seattle attorney William L. Dwyer today was nominated to be a federal judge for the Western District of Washington.

Dwyer's nomination was in a letter from Sens. Slade Gorton and Dan Evans to President Reagan.

Dwyer, 56, would replace Judge Donald S. Voorhees, who wrote to Reagan in January that he would be willing to go on senior status when a replacement was found.

Voorhees, who has been a federal judge for 12 years, will be 70 in August. As a senior judge, he technically would be retired, but would continue to hear cases and be paid the judicial salary of $78,700 a year. Dwyer would also be paid that amount.

For Dwyer, the judgeship would put him on the other side of a bench where he has distinguished himself as a trial lawyer fond of taking on tough and complex public-service issues.

"The private practice of law has been very fortunate for me and I love it," said Dwyer. "But if you do the (judgeship) job right, it's a chance to make a great contribution to the judicial system."

Dwyer, a Democrat, was nominated by two Republican senators.

"It's not unheard of," said Dwyer, explaining that he'd considered seeking the federal position before.

"I always said maybe sometime, but not now," said Dwyer. "Some friends asked me to reconsider." Dwyer declined to name the friends.

If he gets on the bench, Dwyer said one of his chief goals would be to try to reduce congestion and delay in the court system.

The process that led to Dwyer's nomination started in January, when Gorton and Evans asked the State Bar Association to recommend candidates for the post, said Dave Endicott, Gorton's press secretary. He could not say how many names were on the bar's list.

Dwyer's name now goes to the Justice Department for background checks and then will be forwarded to the president.

The Senate Judiciary Committee then holds hearings before making a recommendation to the full Senate. The entire process can take anywhere from several months to more than a year, Endicott said.

Dwyer, a 1946 Queen Anne High School graduate and a 1951 University of Washington graduate, received his law degree from New York University in 1953.

He formed his present law firm, Culp, Dwyer, Guterson and Grader, as Culp & Dwyer in 1957. He was president of the Washington Bar Association in 1979 and 1980.

Dwyer is best known for his dedication to public-service issues.

He worked to get the Seattle Pilots baseball team to stay in Seattle, leading to the formation of the Mariners in the settlement of a suit against the American Baseball League. He fought to recover $12 million in damages from Portland's Donald M. Drake Construction Co. over construction of the Kingdome and unsuccessfully tried to prevent a joint operating agreement between The Seattle Times and The Post-Intelligencer from taking place.

The Law and Mr. Dwyer—U.S. Judgeship Candidate's Modesty Belies High Praise From Colleagues

(By Carol M. Ostrom)

He's familiar with questions, and he knows where these are going. He sips his herb tea as the early morning light peeks through the jungle of plants in his comfortable Montlake home, and smiles softly. "I'm afraid there's no more to me than meets the eye," he says.

What meets the eye beholding William L. Dwyer, however, is considerable.

Nominated last week by Sens. Slade Gorton and Dan Evans to be a federal judge for western Washington, Dwyer, 56, is a well-respected trial lawyer, author and teacher.

He's also a devoted family man, public-education fan, Shakespeare enthusiast, outdoorsman and such a decent human being that he inspires not envy or jealousy but respect and admiration, even among opponents.

Gorton and Evans, both Republicans, crossed party lines to nominate Dwyer, a Democrat.

Those who know Dwyer say they're not surprised at the nomination.

Sure, Dwyer has faults, if you look hard enough, those who know him say. He won't dance. And at least one colleague isn't sure Dwyer's very good at filling the "second chair." But most people end up describing Bill Dwyer in terms that border on veneration.

"If there was one lawyer in the state of Washington that any lawyer or any judge would want to be their lawyer, I think it is Bill Dwyer," says Seattle attorney Lem Howell. "He's a man of total integrity, he's honest, he's bright, he's capable, he's hard-working, he's well-respected, he's reasonable."

Fredric Tausend, dean of the University of Puget Sound Law School, who has opposed Dwyer on several cases, says Dwyer knows when to fight and when to cooperate.

"He never battles you over irrelevant or silly things. He battles you over the important things. You get the feeling you're serving the justice system better when you do that."

"He's very much a defender of the human spirit and the freedom of the human spirit," says James Wilson, senior assistant attorney general and chief counsel for the University of Washington, who has known Dwyer for more than 30 years. "He's a reader and a thinker. He'll be a wonderful judge."

King County Prosecuting Attorney Norm Maleng calls Dwyer "an absolutely unique individual" who would stand out even in a crowd of the most highly qualified.

But there's more to Bill Dwyer than a bunch of "10s" on the trial-lawyer scale.

There was the time he rescued an opposing counsel who—dead tired—literally began babbling to a judge during a conference call about a crucial motion in a long complex case. "Bill, without dropping a stitch, made my position as well as I possibly could have done it," Dwyer's opponent said.

And there was the time he picked up a U-shaped metal bar on the way to a deposition conference with a high-powered battery of corporate lawyers. Saying he'd bent the thick metal, he handed it to a body-builder attorney from Chicago and told him to try bending it back. After Dwyer and his partner won a substantial settlement in the case, the bent bar was installed on his desk as a permanent good-luck charm.

Then there's his devotion to his family—the ones whose pictures are plastered all over two walls adjoining the kitchen in the family's roomy, art-filled home.

Family include Vasiliki, his vivacious Greek wife of nearly 34 years; and three children; Joanne, 24; Anthony, 23, and Charles, 18.

"The family and the law have been the most consuming things in my life," says Dwyer, a slow, careful speaker. Somehow, when he says something that from someone else would sound unbelievable, you believe it. "I love my family dearly," he says. He's spent extended time with his family, including a year in Spain 20 years ago, a time he calls "one of life's great episodes" in which he read voraciously, began writing a book, and spent time, as few fathers do, he says, with his young children. Ten years ago, they traveled around the world.

Paired with his devotion to family is his intense love of the law, which Dwyer discovered almost by accident after majoring at the University of Washington in subjects including forestry, economics and journalism.

Hints of his bent toward championing unpopular causes came early in his career, when he successfully represented John Goldmark, one-time state senator from Okanogan County, in a libel suit against right-wing groups that attempted to label Goldmark a communist.

Dwyer's eloquent book about the trial, "The Goldmark Case: An American Libel Trial," does not, as so many lawyers' books do, place the lawyer at the center of the story. "That's perhaps as good an illustration of his character as anything," says Gorton, who as state attorney general years later hired Dwyer to represent the state and King County against baseball's American League.

Dwyer's victory in the case brought major-league baseball back to Seattle.

Later, representing the county, Dwyer won $12 million in damages against a Portland construction company hired to build the Kingdome.

One of his few major defeats was his failure to prevent a joint operating agreement between The Seattle Times and the Seattle Post-Intelligencer. He waged the long fight substantially for free, with support from his firm, Culp, Dwyer, Guterson & Grader.

In his career he has represented a range of people, including a Black Panther leader accused of receiving stolen property, and Egil "Bud" Krogh, chief of the "White House plumbers," who wanted to practice law after serving his time for the felony and who is now a partner in Dwyer's law firm.

"I saw right away that he was a man of real character and integrity who had made a very bad mistake and had been caught in a difficult situation," says Dwyer. "And the thing that impressed me was that he took full responsibility for what had happened."

Often, Dwyer has represented the little guy against the corporate conglomerate in antitrust cases. "He's not a person who will sell his talents to the highest bidder," says law partner Charles Burdell Jr.

In other ways, he has gone to the aid of those without power. One of the first things he did as Seattle-King County Bar Association president in 1979 was to institute a volunteer program to provide legal assistance to low-income people.

Though he and his family now live well, with homes in Montlake, Bainbridge Island and Mazatlan, Mexico, Dwyer grew up *sans* silver spoon. He did, however, receive something valuable from his mother, who was divorced from his father when Dwyer was 5 years old. The daughter of Skagit dairy farmers, Ila Williams supported herself and her only child working as a stenographer.

"She told me the important things had nothing to do with material success, and she hoped I'd get an education," Dwyer says. "And she also had that great virtue that practically anything I did was a source of great pride to her. She was heavily biased in my favor."

Dwyer's father, a truck driver turned carpenter, now lives in Everett.

"I admire both my parents very much. I think they both gave me a good model for the main virtues—honesty, hard work and so on," says Dwyer, who says he was a quiet, ordinary student who worked at a number of different jobs while in school.

"What early life taught me, I guess, was the lesson that what we call ordinary people—people who are not wealthy, powerful, well-educated—are entitled to just as much dignity and respect and certainly earn as much affection as anybody else. Often more so," he says.

His early experiences translated into an interest in justice, and the law is something Dwyer cares about passionately. He has watched it operate in scores of foreign countries, written about it and even taught it in a course he designed at the University of Washington called "The History and Philosophy of Litigation."

And to have more impact on the system, Dwyer says, he's eager to take what he admits will be a substantial cut in pay (the federal judgeship pays $78,700 a year) to leave the firm he founded with Gordon Culp in 1957.

"I'm happy at what I'm doing and I feel very lucky in what I've done. But I'm willing to take this job because it's right at the heart of the matter as far as justice is concerned," Dwyer says.

And if he wins the appointment, Dwyer says, his deepest wish is that he would inspire people to say: "He's a good judge and you can get justice in his court."

Gorton Says Dwyer "Worth It"

WASHINGTON.—The Senate stood small when it confirmed Daniel Manion to the federal bench. It rose barely as high as the level of the sorriest city council by bowing to Ronald Reagan. Its only satisfaction was that it slouched off with all its alibis in hand.

Vice President George Bush once again broke a tie. He has rescued the president from losing the MX missile and chemical warfare, and has added to his record of noxious loyalty.

PROCEDURAL MOTION

Moderate Republicans, except for the five who valiantly voted against the nomination, can go home and say yes, perhaps we can do better than Manion on the U.S. Circuit Court of Appeals, but claim they didn't really vote to confirm him. They just voted on a procedural motion, which was quite a different thing. They voted to table a motion to reconsider a previous favorable vote on Manion.

It's a club thing, you see. Republicans are for Sen. Robert Dole, R-Kan., their majority leader, who they must support as a matter of prudence and party. One of these was Sen. Daniel Evans, R-Wash., who voted against Manion the first time, on June 26, and who nonetheless voted to deny the Senate a chance to redeem itself last Wednesday.

Democrats have little to brag about. They failed to muster their full strength: Sen. Howell Heflin of Alabama, once chief justice of his state's supreme court, and Sen. Russell Long of Louisiana both came down on Manion's side.

The president, encouraged in his relentless pursuit of right-wing mediocrities on the federal bench, added to the squalor of the occasion by calling the opponents of the nomination "a little lynch mob."

The arresting figure in the pageant of pettiness was Washington's other Republican senator, Slade Gorton. Gorton, who has a reputation as one of the more enlightened members of his party, played the part of the happy horse trader.

From the day that Reagan sent up Manion's name, Gorton announced to one and all that his vote was up for grabs. He was not distracted by Manion's merits. He would vote for or against him depending on the Justice Department's action on Gorton's choice for a district judgeship.

In the middle of the June 26 roll call, Gorton was summoned from the chamber to the Republican cloakroom. There he was told that Justice, which had been sitting for months on the name of William L. Dwyer to the U.S. District Court, was now ready to move the nomination.

When Gorton voted for Manion, Democratic opponents of the nomination, who had been counting on him, howled with rage. They raced up to the Senate Press Gallery and denounced Gorton for selling out.

Gorton, who is up for reelection and a comfortable 22 points ahead of his challenger, Brock Adams, went home to a storm of criticism. One cartoonist showed a mangy wagon labeled "Slade's Shady Trades." Several editorials said of Gorton's deal, "it stinks."

Gorton professed, somewhat obtusely, to be surprised. "This (the Manion nomination) has been treated by the press as a much more important issue than a single Midwestern judgeship should be."

He is a single-minded man. He said in a recent interview that he thought Dwyer, a Democrat and an ardent civil libertarian, is "worth it all." When asked by the Justice Department to submit more names, he refused. His first, second, third, fourth and fifth choices are all Dwyer, he retorted.

Dwyer is, from all the evidence, superbly qualified. He is a brilliant trial lawyer, a teacher and student of the law, a seeker of justice. He was counsel for John Goldmark, a Washington state legislator who brought suit for libel against a gaggle of right-wing fanatics who smeared him as a communist. He won.

Dwyer wrote a book called "The Goldmark Case: An American Libel Trial." It is a clear, 3meticulous, ego-free account that shows him to have the intellectual and legal gifts that would make him an ornament to the bench.

The comparison with Manion is a wipeout. Dwyer can write, Manion's briefs are limping and inept. Dwyer has an appetite for big issues. Manion's practice has been in personal injury and small claims.

NOT UP TO SNUFF

Gorton is asked why Washington state should have such a prize, while Indiana—not to mention Illinois and Wisconsin, which are also in the 7th Circuit—has to settle for someone who, in the words of Sen. Joseph Biden, D–Del., is "not up to snuff."

Gorton retreats into cramped rationalizations. He has two criteria in advising and consenting on judges from other locales: an ABA "qualified" stamp—Manion got a mixed rating of "qualified" and "barely qualified"—and the approval of home state senators.

Sen. Paul Simon, D–Ill., said that Gorton, in swallowing Manion to get Dwyer, had "traded a horse for a rabbit." A U.S. District Court judge only serves in his state. The U.S. Circuit Court of Appeals is just below the Supreme Court.

The founders created the Senate and its six-year terms to protect members from the whims of electorate and executive alike, to encourage them to think large thoughts about the nation as a whole. Last week, the founders failed.

DWYER NOMINATION TO BENCH EXPECTED TODAY

(By Mary Rothschild)

Attorney William L. Dwyer will be nominated by President Reagan today to be a federal court judge in Seattle, Sen. Slade Gorton, R-Wash., announced last night.

Gorton, who with Sen. Dan Evans, a fellow Republican, had recommended Dwyer for the judgeship, called the nomination "more than a personal victory for me in the Senate. It is something from which Washington state will benefit for years."

Dwyer, 57, of Seattle, one of the state's most successful trial lawyers, has been rated by the American Bar Association as "exceptionally well-qualified."

The lawyer, reached at his home last night, said he had been told to expect a phone call from the president today. But in keeping with the low profile he has maintained throughout the nomination process, Dwyer would not comment, explaining he preferred to "forgo saying anything" until the official word comes through.

A CONFIRMATION DELAY

In a written statement, Gorton called the nomination "a long, uphill battle" that was "well worth it."

It isn't over yet. A spokesman for Gorton said it is unlikely that Dwyer can be confirmed before Congress adjourns next week. The nomination will be automatically resubmitted when a new session of Congress convenes in January.

Although the Dwyer nomination is not expected to be controversial with the Senate, it has become a central issue in Gorton's bid for re-election because the senator linked it to his vote to confirm conservative attorney Daniel Manion to the U.S. Circuit Court of Appeals in Chicago.

Gorton initially described Manion as "only marginally qualified" for the bench and indicated he would vote against his confirmation. But at the last minute, Gorton switched his vote and said the administration had promised to move on the Dwyer nomination in exchange for his support of Manion.

Gorton's confirmation vote turned out to be decisive for Manion's appointment. His deal with the White House was assailed by the national and local media and remains a key campaign issue for Democratic challenger Brock Adams.

Yesterday, Gorton continued to insist that the Marion nomination was "parallel to the one with Bill Dwyer" and that "what was fair for Manion in Indiana had to be fair for Dwyer in Washington state."

"I refused to permit a double standard on this one," Gorton said. "I stuck to my guns, and Washington state emerged the winner."

Adams ridiculed Gorton's comments. "It was absurd to draw a parallel between the nomination of Mr. Dwyer and Mr. Manion," Adams said. "Mr. Dwyer is well qualified; Mr. Manion is not. Slade Gorton sold the nation short when he traded politics for principle and delivered Manion to the federal bench."

Dwyer, a partner in the firm of Culp Dwyer Guterson & Grader, established his reputation when he won a libel judgment against John Birch Society leaders in Okanogan County for libeling liberal state legislator John Goldmark.

NEW RIGHT OBJECTS

Dwyer also handled the state's $14 million suit against the American League after the Seattle Pilots baseball team left town in 1970.

The only opposition to Dwyer's nomination to the federal bench has been from "New Right" groups that have tried to initiate petition drives. Mainstream conservatives have avoided any anti-Dwyer campaigns because the nomination is so crucial to Gorton.

In nominating Dwyer last March, Gorton and Evans said the Seattle lawyer would be the only choice. Under political tradition, the senators from the president's party propose appointments to the federal bench in their states—usually giving the White House three names to choose from.

If the White House asked for two more names, Gorton said, they would be, "William L. Dwyer and William L. Dwyer."

Reagan Pegs Dwyer for Bench—Easy Confirmation Expected

(By Eric Pryne and Marshall Wilson)

President Reagan today nominated Seattle attorney William Dwyer to a federal judgeship here. Dwyer is expected to win easy confirmation from the Senate early next year.

Dwyer got a call from Reagan this morning informing him of the nomination.

"The president told me he had a piece of paper on his desk he thought I would approve of and he was sending it over to the Senate," Dwyer said. "I told him I was honored by his nomination, I would be glad to accept and that I would do my very best."

Dwyer's name had been submitted for the nomination by Washington's Republican Sens. Slade Gorton and Dan Evans in June. But the Justice Department balked because Dwyer, a Democrat, was not considered conservative enough.

The nomination was pushed into the national limelight when Gorton struck a highly publicized deal with the White House, promising to vote for Daniel Manion, a controversial nominee for a federal judgeship in Indiana, in exchange for Reagan's support of Dwyer.

Manion was narrowly confirmed, and Gorton came under fire both in the nation's capital and at home. Democrats said the senator had callously traded his vote, and GOP conservatives didn't like Gorton's efforts on behalf of a Democrat.

Dwyer, 56, would replace retiring Judge Donald Voorhees on the bench of the Western District of Washington.

For Dwyer, the $78,700-a-year judgeship would put him on the other side of a bench where he has distinguished himself as a trial lawyer.

The American Bar Association has rated Dwyer "exceptionally well qualified" for the federal bench—its highest ranking. Robert Fiske, a New York lawyer who heads the Bar Association's rating panel, said only two or three of the 75 or 80 nominees to the bench each year are ranked so highly.

Gorton is apparently trying to cast Dwyer's nomination as a plus in Gorton's unexpectedly close campaign against Democrat Brock Adams.

Gorton hailed the nomination as "a personal victory for me in the Senate" and "something from which Washington state will benefit for years."

But Adams said earlier this week that the nomination would only serve to revive the Manion matter in voters' memories.

Dwyer nomination expected to be revived

By Neil Modie
P-I Reporter

Seattle lawyer William Dwyer's derailed nomination for a federal judgeship will probably come back on track next year regardless of whether his sponsor, Sen. Slade Gorton, wins re-election Nov. 4.

That seemed apparent yesterday after Gorton's Democratic challenger, Brock Adams, as well as both of Washington's Republican senators said they would continue to back Dwyer for the federal district court position that has been denied him until next year.

Adams said that if he defeats Gorton, he "would support resubmission of his (Dwyer's) name, absolutely." But Adams said he recognized that as a freshman Democratic senator, he would have little to say about a nomination from a Republican administration.

Chris Koch, Gorton's administrative assistant, said White House and Justice Department officials have told the senator that "if he wants Dwyer next year, they will resubmit him.

"Slade has made it very clear that when he goes back (if he is re-elected), he will definitely ask (for a judgeship) for Bill again," Koch added.

Sen. Dan Evans, who co-sponsored the proposed judgeship for Dwyer, said Dwyer's name "would be the name and the only name I would submit" for the judgeship next year.

"In January, there's no question in my mind that the Judiciary Committee, regardless of who controls the majority, will send his name through," Evans added. "He's the best-qualified judge, from a Democratic viewpoint as well as a Republican viewpoint, that we are likely to get from this administration."

Earlier this month, minority Democrats on the Senate Judiciary Committee killed Dwyer's nomination for this year in retaliation for Gorton's last-minute vote switch in favor of controversial conservative federal appeals court nominee Daniel A. Manion of Indiana.

Gorton cast the deciding vote for Manion last June in exchange for a reluctant White House promise to nominate Dwyer, a highly regarded lawyer whose liberal views caused him to draw opposition from the Justice Department as well as conservative Republicans in Washington state. Dwyer was one of few if not the only Democrat nominated for a judgeship by the Reagan administration.

Democrats on the Judiciary Committee got their revenge on Gorton for his Manion vote when, on a procedural vote early this month, they refused to let the committee take up Dwyer's nomination at its last meeting of the session.

Committee procedures require at least four weeks for the committee to vote on a nomination from the White House. When the committee received a list of the last judicial nominees to be voted upon before congressional adjournment for the year, the Democrats agreed to waive that rule for all but Dwyer.

Dwyer has declined to comment on the controversy surrounding his nomination.

Gorton, running a tight race with Adams, has blamed his challenger for putting his fellow Democrats on the Judiciary Committee up to killing the nomination. Adams has denied having discussed the Dwyer nomination with any Senate Democrats and has blamed Gorton for starting the political machinations on the Manion vote that led to retaliation on the Dwyer nomination.

"I have not had anything to do with their (Senate Democrats') decisions pro or con," Adams insisted yesterday. "All of this involves Gorton and his relationship with all of them."

The Democratic candidate refused to comment on what he thought of the Senate Democrats' action, "because these are things I don't know about. So to comment on their actions one way or another is just not right . . . . But I am for Bill Dwyer, and I will help resubmit his name in January."

Adams said, however, that he would defer to Evans, since the latter would be Washington's senior senator if Adams defeats Gorton, and "because it's his party and his White House. I don't want to tread on Dan's turf."

Evans called the Senate Democrats' blocking of Dwyer's nomination "just a mean little act that was unnecessary . . . . I think they're somewhat embarrassed."

P-I/1985

William Dwyer

He said he has talked with Democrats on the Judiciary Committee and told them that "this is not only a good guy, but he is my nomination as well as Slade's nomination."

[From the Washington Post, Feb. 20, 1987]

GOP Senators Foiled on Judicial Nominees—Justice Department Is Suspected of Basing Opposition on Ideological Grounds

(By Howard Kurtz)

Thirteen months ago, Pennsylvania's senators, Republicans Arlen Specter and John Heinz, recommended that President Reagan appoint a veteran state judge to the U.S. District Court in Pittsburgh.

In their view, James R. McGregor was a solid choice. A lifelong Republican who ran Heinz's first congressional campaign, McGregor has been a respected trial judge in Pennsylvania for 13 years and was recommended by a judicial screening panel set up by the two senators.

But Justice Department officials have refused to approve the nomination, citing an internal report on some of McGregor's criminal rulings that have been overturned on appeal. The senators have denounced the report, prepared for Assistant Attorney General Stephen J. Markman, as sloppy and inaccurate, according to Senate sources familiar with the dispute.

Among other things, the sources said, the report harshly criticizes McGregor for excluding evidence in a criminal case, although the ruling was actually made years earlier by another judge.

While Attorney General Edwin Meese III has said his department uses no ideological litmus test in selecting federal judges, a growing number of Republican senators have questioned whether the Justice Department is refusing to approve their nominees on grounds that the candidates are insufficiently conservative.

These intraparty struggles, while overshadowed by Democratic criticism of Reagan's judicial choices, have produced considerable political resentment. They have also contributed to delays in filling 66 federal court vacancies, which represent nearly 10 percent of the federal judiciary, adding to case backlogs across the country.

While presidents generally nominate district court judges recommended by senators of their party, the Justice Department has bucked this tradition under Meese and insisted that senators submit three to five names for each vacancy.

Republican frustration with this process boiled over during last year's marathon Senate battle over the confirmation of appeals court Judge Daniel A. Manion.

Then-Sen. Slade Gorton (R-Wash.) was widely criticized for trading his vote for Manion in exchange for White House approval of his candidate for a district judgeship in Washington state. Lost in the outcry was Gorton's complaint that the Justice Department had been blocking the nomination of William Dwyer, a liberal Seattle lawyer, for nearly a year.

Days before the vote, Sen. David F. Durenberger (R-Minn.) withdrew a threat to block Manion's confirmation after the Justice Department dropped its yearlong opposition to a judgeship for David Doty, a longtime acquaintance of Durenberger and former president of the Minnesota Bar Association. Durenberger aides said the department viewed Doty as too liberal.

In McGregor's case, some Senate officials say the administration may also be using the nomination to express its displeasure with Specter. A moderate Republican from Philadelphia, Specter has voted against three of Reagan's most controversial judicial nominees—Manion, Jefferson B. Sessions III and District Court Judge Sidney A. Fitzwater—while McGregor's nomination has been stalled.

A spokesman for Specter said the senator "is convinced that McGregor is qualified. If it doesn't work out, he will believe that the decision was made on the basis of ideology, and he won't stand for that."

According to one source, Markman, who screens judicial candidates as head of the Justice Department's Office of Legal Policy, told Senate officials last year that "we could never nominate McGregor. . . . He's what this administration is against."

Markman, a former aide to Sen. Orrin G. Hatch (R-Utah), said last week that he could not comment on a pending nomination. But, he said, "It's just not true that we're holding off because of disagreements with Sen. Specter."

A Justice Department official who asked not to be identified said, "If we were to find a judge who was repeatedly overturned on appeal, we'd want to look at that very closely." While declining to discuss McGregor's case, this official also said there is nothing wrong with scrutinizing the outcome of decisions by sitting judges, as well as their legal quality.

But a Senate Republican aide scoffed at the charge that McGregor is a "judicial activist," saying: "He is not by a long shot a liberal judge. He's what you would call a moderate."

Specter and Heinz pressed their case with Markman and White House counsel Peter J. Wallison earlier this month, but received no commitments about the nomination. While the dispute festers, the Justice Department has apparently retaliated by holding up the senators' candidates for two other district court vacancies in Pittsburgh, about whose records there is little controversy. Markman declined to comment on the delay.

McGregor, 57, a judge on the Allegheny County (Pittsburgh) Common Pleas Court since 1974, said he is "very proud" of his record, and that only a tiny fraction of his rulings in more than 10,000 cases have been appealed.

In only one case has he done "anything that might be construed as being an activist judge," McGregor said. That was a 1980 ruling, overturned by the state's highest court, that challenged the prosecution's right to exclude blacks from a jury.

Sources said the Markman report accused McGregor of overruling the Supreme Court precedent in effect at the time with little factual basis. But McGregor, who ruled after questioning more than 80 witnesses, now notes that the high court outlawed the exclusion of jurors on racial grounds last year. The practice "bothered me personally," he said.

Of McGregor's 10,000-plus cases, fewer than 200 have been decided on appeal. About 40 of the cases have yielded published opinions, and McGregor was reversed in slightly more than half of those cases, which sources said were the focus of the Markman study.

In two cases, the sources said, McGregor was reversed because of precedents handed down after he ruled. In several others, they said, he was affirmed in part or reversed by a narrow appellate majority.

The Markman report focused primarily on contested rulings concerning the admissibility of evidence at trial, sources said. McGregor said that for a time he was the sole county judge ruling on such motions.

In one case, sources said, the report cited scathing criticism by a higher court of the judge who ruled that evidence should be suppressed, on the mistaken assumption that it was McGregor.

"The Justice Department research was so shoddy that they quoted this language and put 'Judge McGregor' in brackets," a Senate aide said. "They were so eager to use this language against McGregor that they attributed the actions of another judge to him."

Sources said Markman has also told the senators that McGregor is disliked by the law enforcement community. But officials ranging from the Allegheny County district attorney to Pittsburgh Fraternal Order of Police. "He's very fair to both sides. I don't find him soft."

Tom Pomeroy Jr., a former Pennsylvania Supreme Court justice, said McGregor "certainly has no reputation for extra leniency or softness, but neither is he a hanging judge. He's a good middle-of-the road person, a good Reagan type of Republican."

[From the Seattle Times, Mar. 17, 1987]

EVANS PUSHES DWYER NOMINATION

(By Eric Pryne)

WASHINGTON.—Sen. Dan Evans, frustrated by the Reagan administration's failure to renominate Seattle lawyer William Dwyer for a federal judgeship, has asked Senate Republican Leader Bob Dole to help pry the nomination loose.

Evans, R-Wash., sent Dole a letter late last week, expressing his frustration with the Justice Department's inaction and recounting his year long campaign to secure Dwyer a seat on the Western Washington District Court bench, said Bill Jacobs, Evans' administrative assistant.

Evans' office would not provide a copy of the letter. But Jacobs said it was requested by Dole, a likely presidential candidate, who plans to speak up for several GOP senators whose nominees for judgeships have stalled within the administration.

"Now we'll see if we get any movement," Jacobs said.

Evans and then-Sen. Slade Gorton, R-Wash., first submitted Dwyer's name to the White House last March. By tradition, the president usually defers to senators from his party in choosing candidates for the federal bench in the senators' states.

But the Dwyer nomination bogged down in the Justice Department. Gorton and Evans said officials there didn't think Dwyer, a Democrat, was conservative enough.

So, last June, Gorton made a deal, casting the deciding vote to confirm arch-conservative Daniel Manion, Reagan's controversial nominee for a Midwest judgeship, after obtaining assurances the president would nominate Dwyer.

Gorton's maneuver provoked widespread criticism, and may have been a factor in his defeat last November by Democrat Brock Adams.

Reagan finally did nominate Dwyer last September, but Congress adjourned before the Senate could confirm him. Senate Democrats, still angry with Gorton over the Manion affair, prevented action.

To stay alive, the nomination must be resubmitted this year, but so far the administration has not done so. Justice Department spokesman Mark Sheehan yesterday refused to discuss Dwyer's status.

"It could well be they're simply not focusing on it," said Jacobs, "but it doesn't reduce the frustration level of Senator Evans and others."

Jacobs said Evans has written letters about Dwyer to Attorney General Edwin Meese, but so far has not succeeded in speaking to Meese about the nomination.

In the letters, Jacobs said, Evans has noted that there is no reason for delay because Dwyer already has cleared an FBI investigation and the American Bar Association has passed on his qualifications.

Adams also has said he supports Dwyer.

Evans was in Montana yesterday and not available for comment.

[From the Seattle Post-Intelligencer, Mar. 20, 1987]

Evans Vows to go "To White House" for Dwyer Judgeship

(By Joel Connelly)

Washington.—Sen. Dan Evans has promised he will "go to the White House" in an effort to end the Reagan administration's delay in nominating Seattle attorney William Dwyer to a U.S. District Court judgeship.

"We haven't been able to get anywhere despite my repeated attempts to get action from the Justice Department," said Evans, R-Wash., whose calls have only managed to elicit noncommittal responses from aides to U.S. Attorney General Edwin Meese III.

The senator was scheduled to confer by telephone with Meese last week, but the attorney general's office canceled the call and has yet to give Evans a new date.

Over the past two weeks, Evans has written personal letters to both Meese and Senate Minority Leader Robert Dole, R-Kan.

Appealing for action, Evans has cited Dwyer's endorsements from leading Republicans, high ratings from the American Bar Association and the backlog of cases in U.S. District Court in Western Washington.

The Dwyer nomination was officially submitted to Congress last summer by the White House, but the 99th Congress adjourned before a Senate confirmation vote could be taken.

While Dwyer is a renowned Seattle trial attorney, and winner of settlements in several well-publicized anti-trust cases, his nomination has triggered unexpected controversy. It was originally proposed in March 1986 by Evans and then-Sen. Slade Gorton, R-Wash.

Dwyer engaged in a 1963 legal battle with right-wing groups in Okanogan County, when he won a libel judgment for former State Rep. John Goldmark. And Dwyer attended a $500-a-person 1984 fund-raising dinner for Democratic presidential nominee Walter Mondale.

The nominee's record, particularly on civil liberties issues, has generated opposition from conservative groups as well as a resolution of disapproval at last year's Republican State Convention.

After the White House failed to act on Dwyer's nomination last spring, Gorton made a deal with the Reagan administration. He cast a decisive vote in favor of controversial appellate court nominee Daniel Manion in exchange for a promise that the White House would act on the Dwyer nomination.

The vote trade was denounced in Washington, DC., and New York, and generated major criticism of Gorton in Washington state.

Word expected on Dwyer nomination

Baker's aid may be crucial, says Evans

by Eric Pryne
Times Washington bureau

WASHINGTON — Sen. Dan Evans, R-Wash., said today that he should know in the next week or two whether the Reagan administration intends to end the stalemate on the nomination of Seattle attorney William Dwyer to the federal bench.

Evans said Senate Republican leader Robert Dole, on behalf of Evans and several other GOP senators, has asked White House Chief of Staff Howard Baker for help on a number of stalled judicial appointments, including Dwyer's.

"I presume by the time we get back from our (Easter) recess we will have an answer," Evans said. The Justice Department hasn't helped, he said, and "we had no chance at all with Donald Regan (the former White House chief of staff)."

Baker, who replaced Regan several weeks ago, is former Senate Republican leader.

The administration is sitting on a number of judicial nominations backed by Republican senators, and it has been "a festering problem for the last several years," Evans said.

Evans and former Sen. Slade Gorton, R-Wash., first recommended Dwyer, a Democrat, for a district judgeship in Seattle 13 months ago. A Republican president ordinarily nominates candidates recommended by Republican senators.

But the Justice Department sat on the nomination; Gorton and Evans said Dwyer didn't meet the agency's ideological purity test. So Gorton cast a key vote last June to confirm controversial conservative Daniel Manion, Reagan's choice for a Midwest judgeship, only after extracting a promise from the White House that Dwyer would be nominated.

President Reagan sent Dwyer's name to the Senate in September. But Congress adjourned before Dwyer could be confirmed, and Reagan now must renominate him if the Senate is to act.

He hasn't. And the Justice Department has refused all comment.

The White House nominated Dwyer in the first place only because Gorton forced it to. And Gorton is gone — Democrat Brock Adams defeated him last November.

Gorton's vote to confirm Manion was one of the most-discussed issues in last fall's campaign.

4/10/87

FOR REAGAN, CLOCK TICKING ON JUDGESHIPS—JUDICIARY COMMITTEE HAS SLOWED ITS PACE

(By Howard Kurtz)

Sen. Arlen Specter (R-Pa.) had a blunt message last week for Attorney General Edwin Meese III: Time is running out on the Reagan administration's hopes of putting more conservatives on the federal bench.

At a Senate hearing, Specter complained that the Justice Department has yet to propose candidates for more than 50 federal court vacancies, including several in Pennsylvania, and that the nominations may soon be sidetracked by presidential politics. "Candidly, I don't expect much to happen in this committee in 1988," Specter said.

Meese countered that the Senate Judiciary Committee has failed to schedule hearings on 13 judicial nominations, some of which are three months old, a record that one conservative publication has called the panel's "slow-motion spring."

Much political blood was spilled last year over President Reagan's judicial nominees, a battle that helped defeat one GOP legislator and boost the Democrats' majority in the Senate. So far, however, it has been the great non-issue of 1987.

One reason is that none of the 31 persons nominated for the bench this year presents the mix of very conservative ideology and questionable credentials that sparked a fierce battle over appeals court Judge Daniel A. Manion. Manion was confirmed 50 to 49 last year amid charges of vote swapping and bad faith.

In light of current political realities, a Justice Department official conceded, "Someone who is marginal is less likely to be nominated." The Senate has voted on 10 of the 31 nominees, confirming all of them.

Judiciary Committee Chairman Joseph R. Biden, Jr. (D-Del.) has also slowed down the process, setting aside all nominees who might prove controversial. When Sen. Strom Thurmond (R-S.C.) ran the committee, nominations were pushed through in four to five weeks, leaving Democrats little time to investigate.

Thurmond has complained about the panel's "extremely slow pace," saying he moved nominations nearly twice as fast.

"I think Joe Biden is rather masterfully overseeing a stall," said Patrick McGulgan of the conservative Free Congress Foundation. "It reminds me of the four-corners offense in college basketball."

A Biden spokesman and Sen. Patrick J. Leahy (D-Vt.), head of a new four-person Democratic unit that screens judicial nominees, both denied the charge, saying the panel has held more nomination hearings in the 100th Congress than during the first months of the 99th Congress.

"The real bottleneck is the Justice Department," Leahy said. "They've been moving very, very slowly . . . Some of the vacancies haven't been filled because they know I will not rubber-stamp someone who is unqualified."

Leahy said he has delayed action on "a few" nominees because of legitimate questions about their records. He said that critics are creating a "smokescreen" so that if the committee moves slowly on an unqualified nominee, "they can say it is purely partisan."

Another factor is that the Justice Department has refused to approve some candidates sought by moderate Republican senators. Specter and Sen. John Heinz (R-Pa.), for example, have been unsuccessfully pressing Meese since January 1986 to name James R. McGregor, a veteran state judge, to a U.S. District Court vacancy in Pittsburgh. The Justice Department has declined to move forward on four other Pennsylvania judgeships while the dispute festers.

"It just amazes me that they're willing to sacrifice seats on the bench" to argue about whether Republican nominees are sufficiently conservative, a GOP Senate aide said. "Judges are one of the few remaining priorities for the Justice Department. They've lost on everything else."

Sen. Daniel J. Evans (R-Wash.) has been urging the administration since January to name liberal attorney William Dwyer to a district court vacancy in Seattle. The White House nominated Dwyer last year as part of a controversial deal in which then-Sen. Slade Gorton (R-Wash.) agreed to vote for Manion, but there was no action on the nomination before Congress recessed. Justice Department sources said there is no chance Dwyer will be renominated.

When Senate Democrats fought Manion and other nominees last year, "They were able to use this as a partisan issue to make a splash," department spokesman Patrick Korten said. Now, he said, "They would just look brutish." Besides, Korten added, "They don't have any vulnerable candidates up there."

Leahy has raised questions about one nominee, Bernard H. Siegan, a University of San Diego law professor nominated in February to the federal appeals court in San Francisco, Siegan "has written a number of books that have views well out of the jurisprudential mainstream," Leahy said.

Liberal groups such as Alliance for Justice and People for the American Way, which fought Manion and helped to defeat the nomination of Jefferson B. Sessions III last year, also are studying Siegan's record.

Korten responded that Siegan is "eminently qualified" to be a judge.

Siegan is a libertarian who has published several books on his freemarket approach to legal issues. Critics have focused on his arguments that the Supreme Court was in its heyday in the early 20th century, when it struck down minimum-wage laws and other statutes designed to curb abuses among sweatshop operators, antiunion organizers and employers of child labor.

In recent decades, Siegan contends, the high court has gone too far in using the 14th Amendment to create constitutional rights to abortion, privacy and desegregated schools.

Siegan is an associate of Meese, who once taught at the San Diego law school. Last year Siegan received a $15,000 Justice Department contract to study the "doctrine of original intent," the Meese-backed theory that the courts should stick to the actual meaning of the framers of the Constitution.

Few of the nominees—who include 11 judges, five sitting U.S. attorneys and seven former federal or state prosecutors—can be said to lack experience for the bench.

Still, they are receiving close scrutiny. Leahy recently charged that Wilkes C. Robinson, former president of the conservative Gulf & Great Plains Legal Foundation, had misled the committee by claiming personal involvement in several lawsuits in which he did not even appear in court. While criticizing Robinson, Leahy supported his confirmation as a Claims Court judge.

The stakes in this struggle are obvious. President Reagan has an opportunity to name nearly half the nation's 744 federal judges by the end of next year, many of whom will be on the bench long after he has left office.

Evans Fights to Save Dwyer Nomination

(By Joel Connelly)

WASHINGTON.—An angry Sen. Dan Evans has gone to the White House to rescue the federal judicial nomination of Seattle attorney William Dwyer amid indications that the Justice Department has refused to approve Dwyer's appointment.

"I'm tired of talking to the Justice Department and have no intention of continuing to do so," Evans said yesterday. "I'll now take my case to . . . (White House chief of staff) Howard Baker." Evans has enlisted the help of Senate Minority Leader Bob Dole, who is scheduled to discuss the Dwyer nomination and other delayed appointments with Baker later today.

Dwyer was nominated for a judgeship last year, and received a congratulatory telephone call from President Reagan. However, the Senate failed to cast a confirmation vote before the end of the 99th Congress, and the nomination died.

The Washington Post quoted Justice Department sources yesterday as saying there is "no chance" Dwyer will be renominated. A high-ranking Republican political consultant privately confirmed the newspaper's assessment.

"These are not the appointments of the Justice Department," Evans retorted yesterday. "These are appointments made by the president of the United States."

Dwyer, a Seattle trial lawyer, continued to stand aloof from the controversy over his appointment.

"No, I haven't heard from anybody," he said, "I'll stick with my usual comment, which is that it is an honor to be considered for the federal bench."

However, he did have the Federal Judicial Center send him material on duties of the judiciary.

"I have read a good deal of it to try and be prepared," Dwyer said.

He was proposed for the federal bench in March 1986 by then-Sen. Slade Gorton, who had worked closely with Dwyer during Gorton's 12 years as Washington attorney general.

The nomination of Dwyer initially was held up for three months, and then burst into the center of national controversy.

To get the White House to act on Dwyer's appointment, Gorton agreed to vote for the Reagan administration's controversial appointment of conservative lawyer Daniel Manion to the 7th U.S. Circuit Court of Appeals.

Gorton's "vote trade," which proved decisive in confirming Manion, came back to haunt Gorton in last fall's Senate campaign. Gorton was upset by Democrat Brock Adams.

Gorton declined comment yesterday on the status of Dwyer's nomination. He said he spoke with Evans after learning of The Post story and has some feelings on the development, but "nothing I want printed in a family newspaper."

Dwyer's nomination was attached by right-wing groups. They complained that he represented the Seattle Library Board when critics sought to have the children's book "Show Me" banned from library shelves.

However, the Dwyer nomination has attracted more than 50 letters of support. His backers have included several of the state's most prominent Republican lawyers and legislators. And Dwyer was rated an outstanding nominee by an American Bar Association review panel.

[From the Seattle Post-Intelligencer, May 22, 1987]

Cases Swamp Federal Court That Badly Needs Fifth Judge

(By Steve Miletch)

As William Dwyer's nomination to the federal bench languishes, the court he would join finds itself buried in cases and badly in need of a new judge.

"We have a monumental need," U.S. District Judge Walter McGovern, chief judge in the Western District of Washington, said yesterday.

Since the middle of last September, when Judge Donald Voorhees stopped accepting new cases because of health problems, the court has been operating with four judges.

Voohees went on senior status in December and is carrying a limited load of old cases to help ease some of the burden.

But the other judges have found themselves overwhelmed with cases, particularly in criminal matters that carry speedy trial provisions.

Recently, Judge Barbara Rothstein had to adjourn a 2-month-old bank fraud trial for three days to accommodate the trial of a Dutch businessman who was convicted of conspiring to smuggle weapons and parts to China and Iran.

Yesterday, she told Bruce Rifkin, the chief clerk of the court, that she faces the potential of having three juries deliberating at one time,

Since Voorhees was taken out of the rotation, 164 criminal cases and 1,157 civil cases have been filed in U.S. District Court in Seattle.

With five judges, each would have been assigned to 33 criminal cases instead of the 41 apiece that were given to McGovern, Rothstein, John Coughenour and Judge Carolyn Dimmick, who was brought onto the court in 1985 to help ease the caseload.

"That's a difference of eight cases per judge," Rifkin said. "Based on criminal cases, that's very substantial for that period."

Each judge also was assigned 289 civil cases, instead of 231 apiece. Already, civil cases can take years before they go to trial.

Overall, the judges are each carrying 58 more cases than normal.

Filings of criminal and civil cases in the first four months of this year are up 20 percent from last year.

Gorton Says Administration Reneged on Dwyer Bargain

Slade Gorton yesterday accused the Reagan administration of reneging on its bargain to nominate Seattle lawyer William Dwyer to a federal judgeship.

Gorton, who is now practicing law in Seattle, said the Reagan administration had failed to fulfill a commitment to nominate Dwyer, an active Democrat, for a vacancy on the federal District Court bench.

To gain that commitment, Gorton told The New York Times, he switched his vote and cast a decisive ballot to confirm President Reagan's nomination of Daniel Manion to a seat on a federal appeals court.

The vote touched off a furor, and became an issue in Gorton's unsuccessful campaign last year for a second term in the Senate.

"It had a commitment and should live up to the commitment," Gorton, a Republican, said of the Dwyer nomination.

He said he believed the nomination had not gone forward this year because "the Department of Justice doesn't like Dwyer" because of his Democratic background. A

White House spokesman, Roman Popadiuk, had no immediate response to the Washington Republican's assertions.

Asked if he thought Reagan opposed the Dwyer nomination, Gorton said: "I think he's so disengaged he doesn't know of it. I doubt that the question has even gotten to him."

The Dwyer nomination was delayed at the Justice Department from early March until late September of 1986.

Last June 26, to expedite moving the Dwyer nomination to the Senate for confirmation, Gorton voted to confirm Manion to the U.S. Court of Appeals for the 7th Circuit, which is based in Chicago. Senate Democrats made the appointment an issue and expected to defeat it.

After saying he would oppose Manion, Gorton switched his vote and gave the nomination a one-vote victory. His switch came after a White House call made while the Manion vote was in progress. Amid a storm of protest, Gorton said he had traded a vote for Manion for the White House's assurance that Dwyer's nomination would go forward to the Senate.

The Dwyer nomination cleared the Justice Department and went to the Senate in late September. But the Democrats, still smarting from Gorton's switch to Manion, blocked a vote on Dwyer before Congress adjourned. Rules require that the nomination be resubmitted to the Senate in the new Congress.

Gorton said he had written to Howard Baker, White House chief of staff, to say, "I thought the administration and I had an obligation and I thought it should live up to that obligation."

Sen. Dan Evans of Washington, also a Republican, supported the nomination when it was made on March 4, 1986, and renewed it when the Senate convened in January. Sen. Brock Adams, a Democrat who defeated Gorton, has said he also supports Dwyer.

Evans has said he will go to the White House to rescue the federal judicial nomination.

"I'm tired of talking to the Justice Department and have no intention of continuing to do so," Evans said. "I'll now take my case to . . . Howard Baker."

Evans also has enlisted the help of Senate Minority Leader Bob Dole.

[From the New York Times, June 9, 1987]

GORTON SAYS WHITE HOUSE RENEGED ON DEAL THAT SET OFF FUROR

(By Wallace Turner)

SEATTLE.—Slade Gorton, a Republican who lost his Senate seat after casting an unpopular vote for a Reagan judicial nominee, today accused the Administration of reneging on its part of the bargain that led to that vote.

Mr. Gorton, who is now practicing law here, said the Reagan Administration had failed to fulfill a commitment to nominate William L. Dwyer, a Democratic lawyer in Seattle, for a vacancy on the Federal District Court bench here.

To gain that commitment, Mr. Gorton said, he switched his vote and cast a decisive ballot to confirm President Reagan's nomination of Daniel Manion to a seat on a Federal appeals court. The vote touched off a furor, and became an issue in Mr. Gorton's unsuccessful campaign last year for a second term in the Senate.

"It had a commitment and should live up to the commitment," Mr. Gorton said of the Dwyer nomination. He said he believed the nomination had not gone forward this year because "the Department of Justice doesn't like Dwyer" because of his Democratic background.

A White House spokesman, Roman Popadiuk, had no immediate response to the Washington Republican's assertions.

Political reporters here attributed Mr. Gorton's defeat by Washington voters, in part, to controversy that involved the Dwyer nomination, which was delayed at the Justice Department from early March until late September of 1986.

Last June 26, to expedite moving the Dwyer nomination to the Senate for confirmation, Mr. Gorton voted to confirm Mr. Manion to the United States Court of Appeals for the Seventh Circuit, which is based in Chicago. Senate Democrats made the appointment an issue and expected to defeat it.

FUROR OVER TRADED VOTE

After saying he would oppose Mr. Manion, Mr. Gorton switched his vote and gave the nomination a one-vote victory. His switch came after a White House call made

while the Manion vote was in progress. Amid a storm of protest, Mr. Gorton said he had traded a vote for Mr. Manion for the White House assurance that Mr. Dwyer's nomination would go forward to the Senate.

The Dwyer nomination cleared the Justice Department and went to the Senate in late September. But the Democrats, still smarting from Mr. Gorton's switch to Mr. Manion, blocked a vote on Mr. Dwyer before Congress adjourned. Rules require that the nomination be resubmitted to the Senate in the new Congress.

Mr. Gorton said he had written to former Senator Howard H. Baker, Jr., the White House chief of staff, to say, "I thought the Administration and I had an obligation and I thought it should live up to that obligation."

Asked if he thought President Reagan opposed the Dwyer nomination, Mr. Gorton said: "I think he's so disengaged he doesn't know of it. I doubt that the question has even gotten to him."

Senator Daniel J. Evans of Washington, also a Republican, supported the nomination when it was made on March 4, 1986, and renewed it when the Senate convened in January. Senator Brock Adams, a Democrat who defeated Mr. Gorton, has said he supports Mr. Dwyer as well.

"I fully expected to have an instant response, and here it is June and I have had no response," Mr. Evans said in a telephone interview. "I have talked with various representatives of the Justice Department on numerous occasions. I finally got tired of doing that."

Mr. Evans said he had shifted his inquiries to the White House, and had been told that Attorney General Edwin Meese 3d was asked to discuss the Dwyer appointment with him. Mr. Evans said he had not been in contact with Mr. Meese since last year.

I INTEND TO BE STUBBORN

"It sounds a lot like a runaround," Mr. Evans said. "I intend to be stubborn about this."

"Last fall the President called and congratulated Dwyer on the appointment," Mr. Evans said. "I can't see that he's changed much."

Mr. Dwyer received the rating of "exceptionally well qualified" from the American Bar Association. Opposition to him came from Republicans offended because he is a Democrat, from an anti-pornography group and an anti-gun control group.

"It is unbecoming of this Administration to stick us with a judge who will not enforce laws against child pornography," said Dr. Andrea Vangor, of Washington Together Against Pornography. The group's leadership criticized Mr. Dwyer for clearing, as a legal adviser to the Seattle Public Library, a book called "Show Me!" The book is used for sex education for children.

Joe Friend, speaking for the Citizen Committee for the Right to Keep and Bear Arms, said his group opposed Mr. Dwyer because of "his strong affiliation with the American Civil Liberties Union, which opposes the rights of gun owners."

[From the Seattle Post-Intelligencer, Jan. 12, 1987]

EVANS GETS TOUGH ON DWYER NOMINATION—SENATOR HALTS ACTION ON OTHER FEDERAL JUDGESHIPS

(By Steve Miletich)

Vowing not to give "one inch," Sen. Dan Evans said yesterday that he will block all judicial nominations in the 9th Circuit until the Justice Department informs him whether it will approve Seattle lawyer William Dwyer for a federal district judgeship.

Evans, speaking to reporters in Washington, D.C., said Attorney General Edwin Meese has refused to respond to his inquiries about the Justice Department's position on Dwyer's nomination.

Meese owes him a meeting or a telephone call to provide him with a definite answer, Evans, R-Wash., said.

"I'm not going to give up," the senator declared. "I don't intend to step aside, not one inch."

Meese's spokesman, Terry Eastland, refused to comment on the latest move in the escalating dispute.

"We simply don't comment on judgeship nominations," Eastland said. "They're made by the president and that's that."

Dwyer also declined comment on the development, as he has done throughout the troubled appointment procedure.

Evans said he has employed a procedural move to block four other nominations in the circuit, which encompasses nine Western states, Guam and the Northern Mariana Islands.

The nomination of Bernard Siegan, a University of San Diego law professor, is pending for a judgeship on the 9th U.S. Circuit Court of Appeals. Another position on the appeals court will open in July when Judge Joseph T. Snead in San Francisco moves to senior status.

In addition, three nominations for federal district court positions in Hawaii, Nevada and California are pending.

Evans, noting that the 9th Circuit has a large appeals court with 26 positions, said there is a strong possibility more openings will occur soon.

But there are "several vacancies the attorney general wants pretty badly right now," said Evans, who has sent a letter to Senate Minority Leader Bob Dole asking that a hold be placed on the nominations.

Under Senate rules, that keeps the nominations from being placed on the Senate calendar for action.

Evans expressed regret over the situation, saying the nominees would probably make "pretty good judges." But he warned that he might broaden his protest to include all nominations to the federal bench.

He said other senators are "willing to engage in the same kind of procedure," but declined to identify them.

The Democratic majority in the Senate is "perfectly happy" to set aside nominations from the Reagan administration, Evans said, especially when the objection comes from a Republican.

In Seattle, some members of the legal community have said Meese will never approve Dwyer's appointment and that, for all intents, it is "dead."

But others have strongly urged Dwyer, who has solicited advice on what he should do, not to withdraw and to allow the political fight to continue.

Evans said he will appeal to the president if Meese objects to the appointment.

Dwyer was recommended for the judgeship in March 1986 by then Sen. Slade Gorton, but the nomination was delayed for three months as Dwyer came under attack by right-wing groups.

To get the White House to move on the Dwyer's appointment, Gorton agreed to provide the swing vote for the Reagan administration's controversial appointment of conservative lawyer Daniel Manion to the 7th U.S. Circuit Court of Appeals.

When the Senate failed to vote on confirming Dwyer's appointment before the end of the 99th Congress, his nomination returned to the Justice Department and hasn't moved since.

On Monday, Gorton, now a Seattle lawyer, accused the administration of reneging on its agreement.

Evans stopped short of saying Reagan officials have reneged on their pledge—because "they haven't reneged yet."

Recalling that Reagan called Dwyer last year to congratulate him on his nomination, Evans said he would be mystified if the administration claimed that the agreement was void because "time ran out."

[From the Seattle Times, June 12, 1987]

Evans Ups Ante on Judgeship for Seattle Attorney

(By Eric Pryne)

Washington.—Sen. Dan Evans is raising the stakes in his push to promote Seattle attorney William Dwyer to a federal judgeship.

Evans, R-Wash., said yesterday he has placed a "hold" on President Reagan's nominees to fill all vacancies to the federal bench in nine Western states—effectively blocking their confirmation by the Senate—in retaliation against the administration's failure to renominate Dwyer.

Under the Senate's cumbersome rules all 100 senators must agree in advance to limit debate on an issue. In placing a "hold," an individual senator may indicate in advance his refusal to go along, raising the threat of a filibuster—which can tie the Senate in procedural knots.

If his "hold" on the president's other nominees doesn't free the Dwyer nomination, Evans said, he may expand it to other administration candidates for judgeships.

"The longer you run with crocodiles, the longer your teeth become," he said. "You operate within the rules you're given."

A Justice Department spokesman had no comment on Evans' actions.

Evans and former Sen. Slade Gorton recommended Dwyer, a liberal Democrat, for a district court seat in Seattle 15 months ago. But Reagan nominated him only after Gorton agreed to cast a key vote last summer to confirm Daniel Manion, a controversial conservative, for a Midwest judgeship.

The Senate adjourned last year before Dwyer could be confirmed, and Gorton was defeated. Now Dwyer must be renominated, but Justice Department officials have indicated informally that that won't happen.

Evans said he still hasn't received a straight answer. "I think the attorney general (Edwin Meese) owes me a phone call or a meeting," he said.

Evans' "hold" covers district and Appeals Court judgeships in the 9th federal judicial circuit, which includes Washington, Oregon, California, Alaska, Hawaii, Montana, Idaho, Nevada and Arizona. Lee Keller-Reis, Evans' press secretary, said there are four District Court vacancies and one appeals court vacancy in the district, and another Appeals Court seat is expected to be vacant next month.

As Reagan's second term winds down, the administration should be pushing for Senate confirmation of as many of its judicial nominees as possible, Evans said.

Majority Democrats in the Senate have no interest in acting quickly on Reagan's nominees for the bench, Evans said, and it makes no sense for Meese to antagonize Republican senators.

Political Plays Slow Judicial Nominations—Work Piles Up Where Vacancies Exist

(By Tony Mauro)

President Reagan's goal of appointing a majority of the nation's 761 federal judges may be thwarted as nominations bog down in presidential and partisan politics.

Reagan has named 312 judges since 1981, but 58 vacancies still loom, leaving nearly 8 percent of all judgeships unfilled.

Work is piling up for sitting judges where vacancies exist: "I've got some righteous anger about it," said Judge John Kane Jr. of Denver, where two of seven seats are unfilled.

The Senate Judiciary Committee meets today on two noncontroversial nominees, but major battles are brewing.

Sen. Ted Kennedy, D-Mass., may hold up the nomination of conservative Bernard Siegan to the 9th Circuit Court of Appeals in California to protest the administration's record on naming minorities to judgeships. Latest statistics: 8 percent of Reagan's second-term nominees are women, 3 percent are black.

David Sentelle, named to the federal appeals court in the District of Columbia, is on hold by Kennedy in a tit-for-tat response to Sen. Jesse Helms, R-R.C., who has delayed a vote on Melissa Wells, nominated as ambassador to Mozambique.

Part of the problem, say Republicans: Committee Chairman Joseph Biden, D-Del., and member Paul Simon, D-Ill., are running for president. "The slowdown looks Democratic. We are frustrated," said conservative Patrick McGuigan of the Free Congress Research and Education Foundation.

Not so, said Biden aide Pete Smith. Only 18 names are pending before the committee, he noted; no one has been named by Reagan for the 40 other vacancies: "There is clearly a problem downtown," referring to the White House.

Dwyer: He's Bright, Honest and Not Yet a Judge

By the very nature of those long-running "new development" type of stories, something gets lost in their almost daily repetition. What gets lost, usually, is the nature, the vitality, the juice of people involved.

No better example exists than the case of William Dwyer's nomination more than a year ago to the U.S. District Court bench in Seattle.

This is truly one of those long-running "development" stories. In the beginning, Dwyer's nomination—hailed by most of the legal community—seemed assured. Then politics got into it, then anxiety, then bitterness; charges of broken promises have been hurled.

As of now, Sen. Dan Evans is threatening to hold up other of the Reagan administration's judicial appointments unless Dwyer's name is again submitted for the judgeship. At one point in this sorry, interminable serial, President Reagan himself called Dwyer to congratulate him on his seemingly assured appointment.

Now it emerges that Dwyer's nomination is encountering an almost faceless, but fierce, opposition from the political far right. At the same time, his supporters include not only a majority of the legal profession, but Republican and Democratic partisans as well. They are almost passionate in their belief that Dwyer is an outstanding candidate for the federal bench.

A sampling of the flood of local letters to the Justice Department on Dwyer's behalf reads like a who's who of business and civic leaders, attorneys and judges. They include letters of support from Republican Norm Maleng, King County's prosecuting attorney, and Seattle Police Chief Patrick Fitzsimons.

So what we have here is a kind of "polarization" of opinion. On the one side is an unprecedented cross section of informed supporters—of all political shadings—urging Dwyer's appointment. On the other side is a faceless, ideologic cluster of ultra-conservatives spreading false rumors and lies about an outstanding judicial nominee.

What gets lost here, as these running-story developments unfold, is the man himself. Who is Bill Dwyer? What is he? About all we are really told is that he is considered an outstanding judicial candidate and that he is a "liberal" Democrat.

Giving Bill Dwyer the shallow label of "liberal" is to say of a melody that it amounts to a symphony. There are many bars of music that make the man.

Curiously, in the 14 months since Dwyer's nomination for the federal bench, only one in-depth story has been written about him in local papers. This was a profile that appeared in The Times on March 14, 1986.

In it was included one tribute by attorney Lem Howell: "If there was one lawyer in the state of Washington that any lawyer or any judge would want to be their lawyer, I think it is Bill Dwyer.

"He's a man of total integrity, he's honest, he's bright, he's capable, he's hard-working, he's well-respected, he's reasonable."

Aside from divine revelation, that's about all you can hope to get from a lawyer—or a judge.

I have known Bill Dwyer for more than 30 years, and I have often said (in moments of presumption) that he is the best friend I have. That may not be reciprocal, but no matter.

Those of us who claim his friendship talk about him a lot. We see him as a richly shared experience, and some of us, I think, feel rather sorry for people who don't know him as well as we do.

His own unspoken, private integrity is balanced by a tolerance and compassion that make him an easy mark for those in need of help. A number of his friends refer to him as "the godfather," using it as a term of almost familial endearment.

Years ago, some of us called him "Destructo," a nickname that is hazy in its beginnings, but one that stuck. Once, when he brought in a settlement against American League baseball owners who capitulated and put back a franchise stolen from Seattle, a mutual friend called to exult: "We don't call him Destructo for nothing, do we?"

Bill Dwyer has an almost lethal wit that he rarely turns against others, using it mostly in self-deprecation; he shuns pomposity.

Today, he drinks sparingly, if at all, but there was a time when he liked to sit up into the tall hours, spinning stories and enjoying the confidence of the cups. He may be all lawyer, but within him is a romantic, a writer and a poet—a man who can quote great swatches of Shakespeare and other writers he admires.

Material possessions mean little to him, even though his law practice has brought him moderate wealth. "Money is good for only three things," I have heard him say. "It should buy good food, a good place to live and the freedom to travel. All else is superfluous."

An astonishing amount of his varied practice has been pro bono work—legal service for free. Though he has brought in enormous settlements in antitrust cases, he is not, as Charley Burdell Jr. was quoted as saying, "a person who will sell his talents to the highest bidder."

He has defended Black Panthers, disbarred lawyers, small-theater owners and other people who need help. "He's very much a defender of the human spirit and the freedom of the human spirit," says his friend, Jim Wilson, legal counsel to the University of Washington.

There is more to say of him, to be sure: A writer of surpassing skill, a creative legal scholar, an innovative teacher of the law, a devoted father and husband—all

things that should not be forgotten in the numbing, repetitive sameness of developing stories about his judicial appointment.

And always, of course, there is the pleasure of his company. The air becomes less troubled when he is around. Good things happen when he is near.

Controversial Nominations

(By Sheldon Goldman)

Perhaps an unprecedented number of controversial lower court nominations were considered by the 99th Congress. Several of them resulted in roll-call votes on the floor of the Senate. Certainly it is hard to recall when so much national attention was given by the media to lower court judgeships. In part, this was a result of the participation of interest groups such as People for the American Way, which mounted a major campaign against two Reagan administration nominees, Jefferson B. Sessions, III, to a federal district judgeship in Alabama, and Daniel A. Manion to the U.S. Court of Appeals for the Seventh Circuit.

Sessions, serving as U.S. Attorney for the southern district of Alabama since 1981, was actively backed by Alabama Republican Senator Jeremiah Denton. Sessions received a split rating from the ABA, with a substantial majority voting *Qualified* and a minority voting *Not Qualified.* Although that in itself would not seriously undermine a nomination during the 99th Congress, the opposition of Alabama blacks to the nomination did. In 1985, Sessions prosecuted on voting fraud charges three black civil rights leaders, but the trial ended in acquittals. Alabama blacks saw Sessions as insensitive if not hostile to the rights of blacks. The investigator for the Democrats on the Senate Judiciary Committee uncovered evidence of Sessions' insensitivity that produced unfavorable publicity for Sessions, the Reagan administration, and Senator Denton. Sessions was called back for further hearings. In his defense, he argued that the damaging remarks attributed to him were said in jest or taken out of context. He denied being racially prejudiced. The administration claimed that opposition to Sessions was political and was essentially grounded in Sessions' conservative views. The Senate Judiciary Committee, at the urging of Senator Biden, finally voted 10 to 8 against the nomination, with Alabama's other senator, Democrat Howell Heflin, voting with the majority. With the Sessions nomination effectively killed, the nomination was formally withdrawn on July 31, 1986. In November, Denton was narrowly defeated for reelection. His defeat was widely attributed to the heavy black vote against him.

The fate of the Manion nomination was ultimately different, but only after a bitter national debate in which the President himself vigorously defended the nomination and campaigned for senatorial votes—unprecedented for a president on behalf of a lower court nomination. The supporters of Manion argued that Manion was attacked because of his conservative views and because of his previous activities with his late father, Clarence Manion (dean of the law school at the University of Notre Dame), a founder of the extremist John Birch Society. Although not a member of the Birch Society himself, Manion, according to his supporters, was being smeared in a manner that smacked of McCarthyism at its worst, guilt by association. Manion's opponents, on the other hand, argued that he lacked a record of distinction and achievement that was expected of appointees to the courts of appeals. They questioned his ability to be an unbiased judge. Furthermore, they doubted his legal competence on the basis of briefs that Manion had submitted to the Judiciary Committee as representative of his legal ability. Manion, like Sessions, received a split vote from the ABA with a substantial majority voting *Qualified* and a minority *Not Qualified.* The Senate Judiciary Committee was evenly split (9–9) on the nomination but voted to send it to the Senate floor without a recommendation.

Lobbying by the administration was fierce, and one Republican senator, Slade Gorton of Washington, who had indicated his intention to vote against Manion, switched sides and suggested that he did so after the administration agreed to nominate Gorton's moderate Democrat candidate for a federal district judgeship in Washington. Other stories emerged of Republican senators extracting from Justice officials sympathetic treatment for their preferred candidates for district judgeships. On June 26, 1987, the Senate voted on the Manion nomination. The vote was 47–47, with Vice President Bush ready to break the tie by voting for Manion. But in a parliamentary maneuver, Senate Minority Leader Robert Byrd switched his vote from a vote against confirmaiton to a vote for confirmation. This made the confirmation vote 48 to 46, but gave Byrd the opportunity to immediately move for reconsideration of the vote.

Technically, Manion was confirmed, but there was doubt because the Senate had on its table the vote to reconsider. Finally, after weeks of political jockeying and continued nationwide media coverage, the Senate voted on July 23 to defeat the motion to reconsider by a vote of 49 to 50. The administration won, but at the cost of a bruising battle. Gorton was hurt politically in his home state of Washington, where he had been favored to win reelection, and in November he was narrowly defeated. Gorton's candidate, William L. Dwyer, was nominated by Reagan in September, and the nomination was given a rating of *Exceptionally Well Qualified* by the ABA. His nomination, however, was not acted upon by the Senate Judiciary Committee. As of this writing, Dwyer has not been renominated, although he has the backing of Washington's remaining Republican Senator, Daniel Evans.

Reagan made other controversial nominations, including three others that wound up on the Senate floor for roll call votes by the full Senate. Sidney A. Fitzwater was nominated to the federal district bench in Texas at the age of 32. He had been serving as a state district judge since 1982 and had been very active politically before going on the state bench. Allegations that he behaved improperly during one particular election campaign by discouraging blacks and hispanics from voting caused controversy. Fitzwater's youth and relative lack of experience along with the split *Qualified* (majority)/*Not Qualified* (minority) ABA rating were also troublesome. The nomination was approved by the Senate Judiciary Committee by a vote of 10 to 5 and sent to the floor of the Senate, where there was a heated debate before a roll call vote resulted in a 52–42 confirmation.

Alex Kozinski, widely acknowledged to possess a brilliant legal mind (he graduated first in his class at UCLA Law School, had been a law clerk to Chief Justice Burger, and had a meteoric rise in his legal career, resulting in an appointment to the U.S. Court of Claims at the age of 32) was 34 when nominated by the Reagan administration to the U.S. Court of Appeals for the Ninth Circuit. Kozinski received a split *Qualified* (majority)/*Not Qualified* (minority) rating from the ABA. Questions arose about his judicial temperament on the basis of a number of allegations concerning his behavior when he served as special counsel to the Merit Systems Protection Board. As a result, further hearings were held. The full committee voted to recommend the nomination and sent it to the full Senate, where a debate on Kozinski's qualifications ensued. A roll call vote was taken and Kozinski was confirmed by a vote of 54 to 43.

Former Republican U.S. Senator James L. Buckley (who was elected in 1970 from New York on the Conservative Party line) was nominated to the U.S. Court of Appeals for the District of Columbia. Originally, the administration had hoped to place him on the U.S. Court of Appeals for the Second Circuit, but insurmountable opposition arose from the New York bar and Republican Senator Lowell Weicker of Connecticut, from whose state Buckley now claimed legal residence. The ABA gave Buckley a split *Qualified* (substantial majority)/*Not Qualified* (minority) rating. Although Buckley was widely conceded to be a man of intelligence and great accomplishment, there were questions raised by his opponents as to his judicial temperament and qualms about his lack of experience in the practice of law. At the time of his nomination he was president of Radio Free Europe, a position he had held since 1982. Buckley was approved by the Senate Judiciary Committee and the nomination was sent to the floor of the Senate, where it was eventually approved by a vote of 84 to 11.

The nomination of Albert I. Moon, Jr., to a federal district judgeship in Hawaii foundered on the vigorous opposition of the Democratic Senators from Hawaii who, while not explicitly invoking the formula used for senatorial courtesy, implied as much. Senator Daniel Inouye took the lead in opposition, based not on Moon's credentials but on the process Moon used to obtain his nomination. Inouye argued in the hearings that in 1978 Moon, a leading Honolulu attorney, had persuaded Inouye to establish a bipartisan judicial selection panel to recommend candidates for federal district judgeships. But in 1985, according to Inouye, Moon made an end-run around the panel to obtain the nomination for himself. Inouye's unrelenting opposition eventually led to the nomination being withdrawn by the White House.

Mention should also be made of a different kind of political controversy that surrounded one Reagan nominee and which soon caused the administration and the Republican senators involved much embarrassment. At the urging of Republican Governor Thomas Kean, the Reagan administration nominated Joseph H. Rodriguez for a federal district judgeship in New Jersey. Although a Democrat, Rodriguez had taken a leadership role in Kean's election campaign. He was appointed public advocate of New Jersey in 1982. Rodriguez had a distinguished legal career, was a former president of the New Jersey Bar Association, and was unanimously rated *Exceptionally Well Qualified* by the ABA. Republican Senators Hatch, John East,

and Denton, all members of the judiciary committee, devised and sent to Rodriguez an eight page questionnaire with 26 questions designed to elicit in detail the nominee's views on a wide variety of issues, including abortion, affirmative action, equal rights for women, prayers in the public schools, the death penalty, various criminal procedural guarantees, busing for the purpose of desegregating the public schools and the like. This questionnaire was apparently sent without the knowledge of Senate Judiciary Committee Chairman Strom Thurmond, who was angered when it came to his attention. Other members of the judiciary committee were also enraged. The administration claimed, and there is no reason for doubt, that it had nothing whatsoever to do with questionnaire. The national publicity was overwhelmingly unfavorable and the questionnaire seemed to give substance to the charge that nominees for federal judgeships were being given litmus tests for their views on matters of public policy. Hatch agreed to withdraw the questionnaire on April 17, 1985, the day of the hearing on the nomination. But Hatch's defense of the questionnaire as a "fact finding" tool and his leadership in devising and sending it may come back to haunt him if he is ever nominated to the Supreme Court.

SLADE GORTON

United States Senate
WASHINGTON, DC 20510

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July 23, 1986

Dear :

I appreciate your interest in my vote to confirm Daniel J. Manion to be a Circuit Court of Appeals Judge for the 7th Circuit, and I am happy to explain my reasons.

The Manion nomination received far more criticism in the press than it warranted. Mr. Manion was determined to be "qualified" by the American Bar Association, which is the only organization which regularly and systematically rates potential nominees to the federal courts. From the inauguration of Lyndon Johnson to the end of President Reagan's first term, 665 persons were nominated for positions on the Federal Bench. Of these, 326 received a "qualified" rating from the ABA and all of them were confirmed. I could determine no reason that Mr. Manion should be treated differently, particularly in view of the fact that much of the criticism was directed not at him, but at the positions and associations of his father.

In addition, Mr. Manion was strongly supported by both Senators from Indiana, his home state, for whose judgment I have great respect. That support reflects broad support within the state of Indiana, the state from which he was nominated, and one of the three states which the 7th Circuit serves. Because most of the press on the subject of Mr. Manion has been so one-sided, I am enclosing a copy of a thorough and thoughtful news column from the Los Angeles Times of July 13 which, I believe, both explains and justifies my position.

In the normal course of events, I would have voted for Mr. Manion as a matter of course. In this case, however, the normal course of events did not unfold. Several months ago, Senators Evans and I nominated for a Federal District Court position in Seattle, William L. Dwyer, a man whom both Senator Evans and I considered to be the single most qualified person for that position, a view which is widely shared in and beyond the legal profession in Western Washington. Because Mr. Dwyer is a Democrat, and on the liberal side with respect to his political views, we received increasing resistance from the Department of

Justice to recommending to the President that he be nominated, in spite of the fact that naming District Court Judges is historically the prerogative of United States Senators of the same party as the President.

In fact, in the last week or two before the vote on the Manion nomination, it became crystal clear to me that we simply could not get Mr. Dwyer nominated without extraordinary efforts. As a consequence, I informed the Administration and both the Republican and Democratic leadership in the Senate, that I would not vote to confirm Mr. Manion unless and until I had received assurance from the Department of Justice that Mr. Dwyer's name would not be vetoed for ideological reasons, and that it would be processed promptly for nomination. In other words, I wanted the same consideration for nominees from Washington as was being given to nominees from Indiana.

It is my conviction that judicial selections in my state should not be based on political philosophy, but purely on the character and legal ability of the nominees.

The Department of Justice, resisting to the last, failed to make such assurances literally until after the roll call on Mr. Manion's nomination had begun, and as a consequence, I did not agree to vote for him until that time.

Even with my strong support for Mr. Dwyer, however, I would not have agreed to such a vote had the American Bar Association rated Mr. Manion to be unqualified. Under the circumstances, however, it was not only proper to leverage appropriate treatment for my state and constituents in return for a vote for Mr. Manion; it was, in my view, necessary to do so.

Sincerely,

SLADE GORTON
United States Senator

SG:ct
Enclosure

OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY COURTHOUSE
516—3RD AVENUE
SEATTLE, WASHINGTON 98104

NORM MALENG
PROSECUTING ATTORNEY

(206) 583-2200

H 1

1 April 1986

The Hon. Edwin Meese III
Attorney General
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

I am writing to you to urge your favorable consideration of William L. Dwyer as a federal district court judge for Western Washington State.

Bill Dwyer is an outstanding lawyer with all the professional and personal strengths necessary to be an outstanding judge. Sens. Gorton and Evans could not have selected a better person to recommend to the President. His nomination will be greeted with enthusiastic acclaim by the entire legal community.

My highest priority since my election as King County Prosecutor in 1978 has been fighting child abuse. Our Special Assault Unit is recognized as a national model for the effective prosecution of these sensitive cases. I know Bill Dwyer shares my deep personal commitment toward this crucial issue. Last year our office shut down an all-night teenage disco where illegal activity ranging from illicit sex to felony drug sales openly flourished. Mr. Dwyer, representing a group of parents whose children had become victims of the adult predators who operated this disco, was instrumental i supporting our successful effort to secure abatement of this moral nuisance.

As one who was present when you received your Life Achievement Award from the National District Attorneys Association's American Prosecutors Research Institute and who in 1984 testified before your wife, Ursula, and others on the Attorney General's Task Force on Family Violence, I know your family has a long-term dedication toward reforming the justice system to be more sensitive to victim issues such as family violence and child abuse.

PROSECUTING ATTORNEY
KING COUNTY

As President of the Washington Association of Prosecuting Attorneys and a Vice-President and member of the Executive Committee of the National District Attorneys Association, I would only recommend to you a judicial nominee who also believed strongly in these goals.

If I can provide you with any other information on Mr. Dwyer which would be helpful to your consideration, please do not hesitate to contact me.

Sincerely,

NORM MALENG
Prosecuting Attorney

NM:dml

Seattle Police Department

Patrick S. Fitzsimons, Chief of Police
Charles Royer, Mayor

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April 17, 1986

The Honorable Edwin Meese
Attorney General of the United States
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

Bill Dwyer, an attorney of excellent reputation in our City has been nominated by Senators Slade Gorton and Dan Evans for presidential consideration to fill a vacancy in the Federal District Court.

I have known Bill Dwyer almost from the time I took my present position several years ago. On three occasions I had the opportunity of working closely with him. The first involved his assistance to me in handling lawsuits brought by former police officers who were terminated for cause on conduct that also generated criminal convictions. Mr. Dwyer and his firm offered their assistance without charge.

The second case involved a Civil proceeding against a notorious "youth center" that was posing as a church operation. This operation attracted young people and facilitated criminal conduct, prositution and narcotic activities. Successful criminal cases against individuals or the operator on liquor violations did not succeed in successfully closing the place. Mr. Dwyer was a singular and committed legal resource in gathering the evidence and cooperation of concerned parents in pursuing a successful Civil abatement proceeding.

Recently in the tragic Christmas eve attack on the Goldmark family which resulted in the death of a Seattle attorney, his wife and 2 sons. Mr. Dwyer again served in a helping relationship to the victims family and to the police investigation.

To me, Bill Dwyer is a man of high ideals and compassion. I believe he has the necessary attributes to be a Federal Judge including; a willingness to be instructed and a willingness to balance the interests of the parties that appear before him.

Thank you for your consideration.

Sincerely,

Patrick S. Fitzsimons

PATRICK S. FITZSIMONS
Chief of Police

PSF:ma

UNIVERSITY OF WASHINGTON
SEATTLE, WASHINGTON 98105

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School of Law
Condon Hall

April 9, 1986

Hon. Edwin Meese III
Attorney General
United States Department
of Justice
Washington, D.C. 20530

William L. Dwyer

Dear Attorney General Meese:

We write as concerned faculty members of the University of Washington School of Law, as interested lawyers, and as involved citizens with varying political affiliations, to express our strong support for the proposed nomination of William L. Dwyer to the United States District Court for the Western District of Washington. We are among the very large group of citizens who believe Mr. Dwyer is the very best qualified person in Washington to be appointed to a federal trial court. Indeed, we feel extremely fortunate that a lawyer with such exceptional energy, intellect, and integrity is willing to give up a very successful private practice to accept an appointment to the bench. His willingness to do so is a great tribute to the quality of the federal judiciary and our continuing dedication to justice and the rule of law.

The people and the profession will be very well served if Mr. Dwyer is appointed to our District Court. Over the years Mr. Dwyer has served the legal profession and the public with distinction in a number of capacities, including membership on the Board of Governors of the Washington State Bar Association, to which he was elected by his fellows at the bar. The law faculty had an opportunity for closer observation of him in the fall of 1982 when he was the first distinguished practitioner in residence at the Law School. During his time with us he he taught a highly successful course on the History and Philosophy of Litigation, and stimulating faculty colloquia and discussions, including an informative one on court congestion, delay, and the administration of justice. Mr. Dwyer's many contributions to the profession were recognized by the Washington Law Review which named him as the recipient of its Distinguished Achievement Award in 1985.

If you have any questions regarding our endorsement of Mr. Dwyer or would like additional information or elaboration, please let us know.

Sincerely,

John R. Price,
Dean and Professor of Law

Professor of Law

Professor of Law

Professor of Law

Professor of Law

Professor of Law

Professor of Law

Professor of Law

Professor of Law

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JACK P. SCHOLFIELD, CHIEF JUDGE
DIVISION I
ONE UNION SQUARE
600 UNIVERSITY STREET
SEATTLE, WASHINGTON 98101
(206) 464-7654

The Court of Appeals
of the
State of Washington

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June 5, 1986

The Honorable Edwin Meese, III
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Meese:

I am writing in support of the nomination of William L. Dwyer for the U.S. District Court for the Western District of Washington. My views are my own, based on personal knowledge, and not solicited by Mr. Dwyer or anyone on his behalf.

I have known Bill Dwyer personally for about 20 years now and have been aware of his excellent reputation longer than that. I have had the experience of working with him in a litigation in which we represented separate codefendants and have had him appear before me when I was a trial judge on the superior court here in King County. I also know of some, but not all, of his selfless work on behalf of our federal, state and local bar associations.

Being a judge myself, I believe I have a good understanding of the qualities that a person must possess in order to be a good judge. Bill's integrity is absolutely beyond doubt. I have never heard a word of criticism about his honesty, reliability or integrity. He is highly intelligent, and with his broad background of experience in trial and appellate advocacy in both state and federal courts, he is unusually well qualified to deal with the intellectual challenges presented by service on the federal bench.

Bill Dwyer is devoted to the law and, on the bench, will exhibit the industry, even-tempered disposition, courtesy, common sense and firmness which mark those truly qualified for judicial service.

Bill's appointment will be well received by the bar and the public generally because he is well liked in our community and enjoys an excellent reputation as a man devoted to his family and his community.

I know of no person better qualified to sit as a United States District Court judge.

Sincerely,

Jack P. Scholfield
Chief Judge

JPS/mj

BOGLE & GATES
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

JOEL PRITCHARD
DIRECTOR OF
GOVERNMENT RELATIONS

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(206) 682-5151 TELEX: 32-0037

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March 28, 1986

The Honorable Edwin Meese III
The Attorney General
Department of Justice
Washington, DC. 20530

Dear Attorney General Meese:

I was pleased when I read about Bill Dwyer being nominated to the Federal Bench. He is a person of remarkable character, a great mind, and enormous commitment in serving his community. When you put Bill Dwyer on the bench, this administration proves its commitment to quality in appointments.

In every campaign (six) when I was running for Congress in the First District of Washington State, Bill Dwyer gave me strong support. His support carried real weight in our community.

Last week when I was home in Seattle, I heard more favorable comments on this appointment than any Judicial appointment in my memory.

I enthusiastically endorse his nomination.

Sincerely,

Joel Pritchard

Joel Pritchard

2300 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104

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April 3, 1986

The Honorable Edwin Meese III
Attorney General of
the United States
Washington, D.C. 20530

Dear Mr. Attorney General:

I am writing to encourage Mr. William Dwyer's nomination to the position of United States District Judge for the Western District of Washington.

I have known and worked with Mr. Dwyer for approximately thirty years and have firsthand knowledge of his outstanding character and ability.

Furthermore, I believe that Senator Gorton's selection of Mr. Dwyer to fill the post of Donald Voorhees, whom I have also known for many years, is a most appropriate choice and should be of great assistance in Senator Gorton's re-election campaign this year.

Very truly yours,

John Spellman

John D. Spellman
Former Governor of
the State of Washington

SCHWEPPE, KRUG & TAUSEND, P.S.
ATTORNEYS AND COUNSELORS AT LAW

7

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RICHARD C. TALLMAN
ROBIN S. TAUB

MICHAEL E. ANDERSEN
WARREN A. DOOLITTLE
JOHN N. RUPP
OF COUNSEL

March 7, 1986

Mr. Fred Fisher Fielding
Counsel to the President
The White House
1600 Pennsylvania Avenue
Washington, D. C. 20500

Dear Fred:

The Seattle Post-Intelligencer for Thursday, March 6, reported the news that Senators Slade Gorton and Dan Evans of Washington had submitted the name of Seattle attorney William L. Dwyer to the President for nomination as United States District Judge for the Western District of Washington. The choice of Bill Dwyer to fill the position opened by Judge Donald Voorhees' transfer to senior status could not, in any way, be improved upon.

I have known Bill Dwyer well throughout his more than 30 years of distinguished practice as one of the state's finest trial lawyers, probably the best trial lawyer now practicing in this region. I have been associated with Bill on a number of matters and thus know of his abilities first hand. Impressive as his trial skills are--and they are among the most impressive I have ever seen in over 50 years of practice--the qualities which I admire most in Bill Dwyer are his consistently sound judgment, his unflagging committment to obtain justice for the clients he represents, and the sheer decency and integrity of the man--qualities which strike everyone who has the privilege of knowing him. The strength of character which has made William Dwyer an outstanding trial lawyer will make him an equally fine federal judge.

Much of my professional life has concerned the federal courts. I have written several books on federal practice. I have practiced before many federal judges in many different states in my lifetime, some excellent, some good, some not so good. I can assure you, and you can assure the President, that in naming William L. Dwyer to the federal bench he will be making an appointment which will be a credit to his presidency and a service to the nation. I hope that the appointment will be made soon so that Senate confirmation can proceed and Mr. Dwyer can begin what I know will be a career of distinguished service on the federal bench.

Sincerely,

Alfred J. Schweppe
SCHWEPPE, KRUG & TAUSEND

AJS:lsh

UAL INC.

Edward E. Carlson
Chairman Emeritus
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Seattle, Washington 98111
(206) 447-5005

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April 14, 1986

The Honorable Edwin Meese III
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

In due course you will be asked to make your recommendations with respect to the appointment of William L. Dwyer as a Federal Judge. Members of the Bar in the State of Washington will have furnished your staff with appropriate documentation as to his professional qualifications.

I am writing you as a layperson: one long active in civic affairs in the Pacific Northwest, --and to a lesser extent nationally, when I was Chairman and Chief Executive Officer of United Airlines.

I found William Dwyer on numerous occasions willing to share his professional experience in a variety of ways on programs that were important in civic and social efforts in the State of Washington.

I know many in the Pacific Northwest who are not of the legal profession believe William Dwyer would be an outstanding member of the Federal Court, and respectfully urge your favorable endorsement of his appointment.

Sincerely yours,

/s/

EEC/rs

bcc: The Honorable Slade Gorton
Mr. Chris Koch
Mr. Gordon Culp

THE HEARST CORPORATION

959 EIGHTH AVENUE

NEW YORK, NEW YORK 10019

VICE PRESIDENT
AND
GENERAL COUNSEL

9

April 16, 1986

Honorable Edwin Meese, III
Attorney General
United States Department of Justice
Washington, D. C. 20530

Dear General Meese:

This is in support of the recent nomination of William L. Dwyer for the important office of United States District Court Judge for the Western District of Washington.

I have known Bill Dwyer for some time and, although several years ago we found ourselves on opposite sides of issues relating to the then proposed Seattle joint newspaper operating arrangement, I consider him to be one of the most distinguished and able lawyers with whom I have dealt. In my judgment he is eminently qualified to serve as a United States District Court Judge by reason of his temperament, discernment and scholarship. He possesses the essential ability to analyze critically extremely complicated issues, which enables him to reach the heart of the matter before him in prompt fashion. I am absolutely convinced that Bill Dwyer, with your support, will become an outstanding member of the Federal judiciary.

Therefore, without qualification, I strongly urge your acceptance of Bill Dwyer's nomination.

Respectfully yours,

Harvey L. Lipton

HLL/mc

xc: Honorable Slade Gorton

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10

WILLIAM H. GATES

April 18, 1986

The Honorable Edwin Meese, III
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

RE: William L. Dwyer -- Federal District Court
Western District of Washington

Dear Sir:

I understand that Seattle attorney, William L. Dwyer, is under consideration for appointment to a federal judgeship in this district.

I have practiced law in this district for thirty-five years. I have served as President of the Seattle-King County Bar Association, a Governor of the Washington State Bar Association, a member of the House of Delegates, and a standing committee chairman for the American Bar Association. As a result of this Bar work and many, many years in federal and state court rooms in this area, I have developed a deep appreciation for those unique judges whose personal intelligence and broad experience make them capable of being fair, tough and decisive.

There is just no question that Bill Dwyer will be such a judge. I have had a lot of personal experience with him and know him to be fair, tough and decisive. He would be an outstanding addition to our federal bench.

Yours sincerely,

/s/

William H. Gates

WHG:cmb

bcc: Hon. Slade Gorton, Attn: Mr. Chris Koch
Mr. Gordon C. Culp

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PAUL W. STEERE, P. S.

PLEASE REPLY TO SEATTLE OFFICE

FILE:

11

April 4, 1986

Honorable Edwin Meese, III
Department of Justice
Constitution Avenue & 10th Street
Washington, D.C. 20530

Dear Mr. Meese:

Senators Gorton and Evans of Washington State recently put forward the name of William L. Dwyer for appointment to the United States District Court for the Western District of Washington. I have been a member of the Bar of the State of Washington for 33 years and am an active Republican. From that vantage point I most heartily endorse the candidacy of Mr. Dwyer for this office.

I have known Mr. Dwyer personally and professionally for many years, have served with him on the Board of Governors of the Washington State Bar Association, and have used him, as a lawyer of first choice, in numerous referrals and for the representation of my own firm.

Dwyer is incorruptible, hard working, bright and without doubt one of the finest trial lawyers in this area. His loyalty to our institutions and to our systems of laws is beyond challenge. In our two years together on the Board of Governors of the State Bar Association he displayed fine judgment, restraint and practical solutions to many difficult and divisive questions that came before the Board. Dwyer enjoys the highest level of esteem among his colleagues at the Bar and in the broader community, as is evidenced by the enthusiastic editorial support he received in the press when his candidacy for this office became known. I am sure that this appointment would reflect great credit upon the administration in the sense that it would be a clear signal that the President and the Department of Justice are focusing on highest quality candidates.

Frankly, it was something of a surprise to me that Mr. Dwyer would accept a judicial appointment in view of the successful practice he has developed. Doubtless his personal circumstances make it possible for him to make the financial sacrifice which would result from his becoming a federal judge.

I endorse his candidacy without reserve and respectfully ask you to consider him favorably. If he is lost to the bench we will be missing a great opportunity.

Sincerely,

BOGLE & GATES

Paul W. Steere

bcc: Christopher Koch
J. John Coughenour
William L. Dwyer

ROBERT R. REDMAN
ATTORNEY AT LAW

120 North Naches Avenue
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Telephone (509) 453-9131

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April 14, 1986

The Honorable Edwin Meese III
Attorney General of The United States
United States Department of Justice
Washington, D.C. 20530

Re: William L. Dwyer

Dear Mr. Attorney General:

I know I am joined by many lawyers in the state of Washington in urging favorable consideration of Bill Dwyer for United States District Judge for the Western District of Washington. In nearly thirty years of practice, I can recall but few lawyers who have enjoyed the universal respect, both as a person and as a lawyer, that this most able man commands. The respect is not only for his abilities as a lawyer but also for the man as an individual. The respect comes from those who have worked with him as well as those who have opposed him in the course of litigation. He has the rare combination of personal wisdom and judgment, personal integrity and truly outstanding intellectual skills.

During my year of service as President of the Washington State Bar Association, Bill Dwyer served as a member of the Board of Governors. For one year I had an opportunity to see, first hand, how my old college friend and long time lawyer acquaintance had come to full flower. His voice on the Board was respected, listened to and in almost every instance his counsel prevailed. There are many, many lawyers practicing in this state and elsewhere. Unfortunately, I find that the number of highly skilled lawyers is far greater than the number of wise ones. Bill Dwyer is unique in that he is a very skilled lawyer who is also a very wise one. In my judgment, his most admirable character trait, among many, is his humility and humanity even though he is aware of and confident in his skills and abilities.

While I'm aware Bill and I may differ in political philosophy, my professional sense is that this man belongs

on the bench, his instincts and temperment and now his experience, qualify him without question.

Mr. Attorney General, I respectfully urge favorable consideration of Mr. Dwyer.

Very sincerely,

ROBERT R. REDMAN

RRR:sb

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COUNSEL TO THE FIRM
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PLEASE REPLY TO SEATTLE OFFICE

April 16, 1986

Hon. Edwin Meese, III
Attorney General
U. S. Department of Justice
Washington, DC 20530

Dear Sir:

As you know, Washington Senators Gorton and Evans have nominated William L. Dwyer for the position of United States District Judge for the Western District of this state. I would like to have my name included amongst those who strongly endorse this nomination and who feel that Mr. Dwyer would make an excellent jurist.

I have known Mr. Dwyer for many years. He has a very judicious manner and temperament, is one of the best known and qualified trial attorneys in the Pacific Northwest and is of the very highest character and integrity. He is a former president of the Seattle-King County Bar Association and last year concluded a three-year term as a member of the Board of Governors of the Washington State Bar Association. I had the privilege of serving as President of the latter organization last year and that gave me an opportunity to frequently socialize and work with Mr. Dwyer. I can honestly say that I know of no lawyer practicing in this area who could better serve the citizens of this state as a United States District Judge. He fits the role almost to perfection.

I can assure you that Mr. Dwyer approaches the decision-making process in a forthright, objective and scholarly manner. Through the years that I have known him I have never noted the slightest indication of political interest effecting any of his decisions. I am confident that his appointment to the bench would be supported and welcomed by the vast majority of lawyers practicing within this state. I urge you to give favorable consideration to his nomination.

Very truly yours,

F. Lee Campbell

FLC:bjh

bcc: Sen. Slade Gorton
William Dwyer
Gordon Culp

Patrick C. Comfort
ATTORNEY-AT-LAW
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(Fircrest Village Square)
FIRCREST, WASHINGTON 98466
(206) 564-8400

Patrick C. Comfort
Michael Brian Smith
Associate

14

April 10, 1986

The Honorable Edwin Meese, III
Attorney General
United States Department of Justice
Washington, D.C. 20530

Dear Attorney General Meese:

I understand that William L. Dwyer is being considered for nomination to fill the vacancy on the United States District Court for the Western District of Washington, which vacancy was caused by Judge Donald S. Voorhees assuming senior status.

I was pleased to learn that Bill Dwyer would apparently allow his name to be considered for nomination.

I have known of Bill Dwyer and his extraordinary talent as a trial lawyer, scholar and gentlemen for more than twenty years. Throughout the years Bill Dwyer has held the reputation in many circles of being the most outstanding trial attorney in the State of Washington.

Beyond that, however, during the period 1982-1984 I was privileged to serve with Bill Dwyer as a member of the Board of Governors of the Washington State Bar Association. Throughout our discussion of issues which came before the Board, I was constantly impressed with Bill's ability to determine matters of considerable importance in a balanced and judicious manner.

I may well disagree with Bill on certain philosophic viewpoints, few of which relate to the administration of our system of justice. But I would never question his integrity, intellectual acumen, fair mindedness and incisive ability to perceive all sides of any issue. In these regards he is of the highest caliber and well worthy of consideration for appointment to the Bench.

I am well aware that many considerations enter into the determination of whether a person is selected for judicial appointment. I can only say that if Bill Dwyer is passed over, this system has not been well served, nor the citizens of this State.

I would be pleased to meet with any representative from your office to review the opinions stated herein and I sincerely hope that you will find merit therein.

Sincerely,

PATRICK C. COMFORT

PCC:fa

bcc:

Slade Gorton
Dan Evans
Gordon Culp

604114

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15

April 10, 1986

The Honorable Edwin Meese III
Attorney General
United States Department of Justice
Washington, D.C. 20530

Re: William L. Dwyer
United States District Court for Western District
of Washington

Dear Attorney General Meese:

Mr. Dwyer has been proposed for appointment to the United States District Court.

It was my pleasure and privilege to serve with him for two years (1982-84) on the Board of Governors of the Washington State Bar Association. Also, I have known Bill in private practice and in the American College of Trial Lawyers and the American Bar Foundation. Bill Dwyer would bring to the bench the background and experience that is only attained through years of trial work. His honesty, integrity and judgment are of the highest order.

My son is completing his third term as Republican State Representative of the Washington Legislature. I am told that during the closing days of the recent legislative session a Republican Senator succeeded in getting some of his fellow legislators to sign on a letter opposing Mr. Dwyer's appointment. I doubt that any of them could approximate the acquaintanceship that I have with Bill's skills, temperament and character. Also, I doubt that any of them are more closely identified with Republican philosophy and activity than I am.

The bench and public could not find a more appropriate appointment than William L. Dwyer.

Yours truly,

J. A. Vander Stoep

JAV:lp

bc: The Honorable Slade Gorton
ATTN: Chris Koch
Senate Office Building
Washington, D.C. 20510

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D. JOHN THORNTON

16

April 9, 1986

Honorable Edwin Nees, III
Attorney General of the United States
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

I am taking the liberty of writing you concerning the nomination of William Dwyer for Judge of the United States District Court, Western District of Washington. I sincerely urge you to recommend his appointment.

I have known Bill Dwyer since law school and am familiar with his distinguished legal career. Without question, he is regarded by his fellow Washington lawyers as being as able as any lawyer practicing in the Northwest. It is gratifying to me that a successful lawyer of his ability is willing to leave private practice to become a Federal District Court Judge.

Bill Dwyer is a bright and able lawyer, is a kind and decent man, and an individual not so tied up with his own personal notions of jurisprudence that he cannot bring himself to apply established rules of construction and stare decisis. He will make a superb trial judge and the Bar and the citizens of Washington will be well-served by his appointment.

Thank you for your consideration.

Very truly yours,

John E. Heath Jr

JOHN E. HEATH, JR.

JEH:jms

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REPLY TO Seattle Office

April 11, 1986

Hon. Edwin Meese, III
Attorney General
United States Department of Justice
Washington, DC 20530

Dear Sir:

As a life long republican who has spent his entire adult career practicing law, I was most pleased to learn that Senators Gorton and Evans had submitted the name of William L. Dwyer for nomination to serve as United States District judge in the United States District Court for the Western District of Washington at Seattle.

It has been my pleasure to know Mr. Dwyer since law school some 35 years ago and follow his career throughout the interval, I must say, with some envy. Mr. Dwyer is one of the most prominent trial lawyers in this state and as such was early on invited to become a Fellow in the American College of Trial Lawyers. As a litigator he has been prominent in the anti-trust field handling many substantial matters including the suit which was responsible for returning major league baseball to the City of Seattle.

Mr. Dwyer has been active in serving the profession throughout his career. About 8 years ago he served as president of the Seattle-King County Bar Association and only last September completed a 3 year term on the Board of Governors of the Washington State Bar Association. On several occasions he served as a Lawyer-Delegate to Judicial Conferences of the Ninth Circuit.

In the recent past, Mr. Dwyer took time from his firm to prepare materials for and teach a new course at the University of Washington law school on the history of the law.

As a trial lawyer myself, I want you to know that I know of no one better qualified to serve in the position for which he has been recommended by Senators Gorton and Evans. Mr. Dwyer is without quibble one of the finest lawyers in the State of Washington. He is a man of judicial temperament who has devoted his life to the practice of law and service to his profession and its betterment. I strongly urge your support of the Senators' recommendation to the President.

Thanking you for your consideration in this matter, I am,

Very truly yours,

Paul C. Gibbs

PCG:bld

bcc: Mr. Chris Koch
bcc: Mr. Gordon C. Culp

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Richard E. Williams, P.S.
(206) 583-8411

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April 11, 1986

The Honorable Edwin Meese III
United States Attorney General
U. S. Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

I am writing to ask your favorable consideration and support of the prospective nomination and appointment of William L. Dwyer as a judge of the United States District Court for the Western District of Washington.

Mr. Dwyer has been a professional colleague, though most often in an adversarial litigation relationship, for over 20 years. His appointment would, in my opinion, be in the highest tradition of excellence in the Federal judiciary, and as a consequence of manifest credit to this Administration.

I can think of no person whose professional reputation and personal integrity I hold in higher regard. Beyond that, his promise and commitment to the highest standards of judicial competence and excellence on the USDC trial bench are striking.

He has my total and unqualified support in the consideration of his appointment to this important position.

I last had the privilege of talking with you in February, 1984, before your confirmation, at my firm's and Senator Gorton's reception for Senator Evans at the Georgetown Club. I hope the opportunity to renew that pleasurable occasion will present itself in the months ahead.

Sincerely yours,

Richard E. Williams

REW:sh
bcc: Gordon Culp
Chris Koch

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19

April 23, 1986

The Honorable Edwin Meese, III
The Attorney General
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Meese:

This is a letter to compliment and commend you and President Reagan for an outstanding nomination to the Federal District Court for the Western District of Washington. If I could have selected the single person most qualified for that position it would have been Mr. William L. Dwyer of this city. His confirmation will mean the appointment to the federal trial bench of one of the most distinguished lawyers in the history of the bar of this state.

I have known William Dwyer for more than twenty years and have observed his performance in the trial of complex cases. His preparation has been meticulous and painstaking. His analysis of legal issues has been thorough and penetrating. His record for integrity and honesty has been without flaw.

As a lifelong Republican, I was proud of this administration for making this nomination. As a practicing lawyer for 37 years, I am delighted that such an outstanding trial lawyer will be added to the federal trial bench.

Mr. Dwyer's legal ability, intellectual capacity, grasp of trial situations, patience and objective judgment are qualities which will serve us well when he becomes a federal judge.

I seldom write a letter either in support of or opposition to judicial appointments, but this is one time when the appointment is so outstanding that I can't resist. My compliments and congratulations to you, sir, on a duty well done.

Sincerely,

James R. Ellis

JRE:pc

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J.G. Cairns, Jr.
Chairman of the Board
Chief Executive Officer

FIRST OKLAHOMA
BANCORPORATION, INC

April 11, 1986

The Honorable Edwin Meese, III
Attorney General
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

By way of introduction, my name is J. G. Cairns, Jr. and I am writing to speak in favor of the early confirmation of Mr. William L. Dwyer as Federal District Court Judge of the Western District of Washington.

Until recently, I was a lifelong resident of the state of Washington, where I have been a registered Republican for many years. In my capacity as President of the Peoples National Bank of Washington, I first became acquainted with Mr. Dwyer several years ago. Since then I have known him both personally and professionally--professionally most recently when I served as Chairman of the Board of a state of Washington-owned non-profit corporation organized under former Governor Spellman's (Republican) administration. The purpose of this corporation was to sight, design, build, and operate a major convention center in downtown Seattle.

I am writing to you because it is my understanding that Mr. Dwyer's nomination has been questioned by several Republican members of the state legislature. Apparently in question is Mr. Dwyer's overall philosophical approach. From my personal experience, I can attest that Mr. Dwyer is neither liberal nor conservative; rather, he is an extremely intelligent, articulate man whose judgments are well reasoned and reflect his keen ability to understand the facts and judge a situation by its merits.

Frankly, when I learned that Mr. Dwyer would accept a position on the bench, I was most pleased that an individual of his capabilities would serve in this capacity. There is absolutely no question in my mind that as a Federal District Court Judge, Mr. Dwyer would be among the best, if not the best, judge that the Western District has ever had.

I urge you to do what you can to speed his early appointment.

Very truly yours,

J. G. Cairns, Jr.

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21

IN REPLY PLEASE REFER TO
FILE NO. _____

May 22, 1986

Honorable Edwin Meese, III
Attorney General
United States Department of Justice
Room 5111 Main Justice Building
Tenth and Constitution Avenue Northwest
Washington, D. C. 20530

Dear Attorney General Meese:

It has come to my attention through newspaper reports that Senators Slade Gorton and Daniel J. Evans have recommended the appointment of William L. Dwyer as a judge of the United States District Court for the Western District of Washington.

I am writing to strongly urge your recommendation to the President that he act favorably upon the appointment of Mr. Dwyer to the Federal judiciary. It is my firm belief that he more than meets all standards, measures and tests to become an absolutely outstanding addition to our Federal bench.

It has been my privilege to be acquainted with Mr. Dwyer at least since 1957 when I was a Deputy Prosecuting Attorney for King County and engaged in the prosecution of a case of some national significance. Mr. Dwyer was then assisting counsel for the defendant and was primarily responsible for preparation and presentation of briefs and other documents in the case. He was most impressive as an adversary and gained the respect of the judge and legal counsel for his excellent legal writing and analysis and for his balanced demeanor.

In succeeding years, Mr. Dwyer continued to distinguish himself as a legal scholar and lawyer. He has been active in bar association and community activities. He has been active in law education, particularly at the University of Washington School of Law. I have heard from members of the legal profession and our

COPY

general community only high praise for his integrity, ability and strong sense of fairness. While I would not characterize myself as a close personal friend, I nevertheless consider myself a personal friend of Mr. Dwyer's and have the highest personal regard for him in all respects.

In addition to my experience with Mr. Dwyer in the early years, I have had an opportunity to observe him professionally in my various roles as Judge of the Superior Court of Washington for King County and as Professor of Law at the University of Washington.

During my tenure on the trial bench (1966 to 1973), Mr. Dwyer appeared before me from time to time representing clients. I would rate him exceptionally outstanding as a trial lawyer. His courtroom skills, demeanor, courtesy and intelligence was recognized by me as a presiding judge and also by his opposing counsel and other participants in the courtroom. He is a senior partner in the law firm of Culp, Dwyer, Guterson and Grader. His firm, like him, enjoys a reputation in our community as one of our more outstanding firms.

I recently retired from the University of Washington as Professor of Law in the School of Law, having served in that capacity from 1973 to 1985. I served as Associate Dean during a portion of that time. While I was still actively teaching at the Law School, Mr. Dwyer was a strong supporter of its programs. I know that we called upon him for service in connection with alumni activities, fund-raising activities and student affairs. He was always positively responsive. Perhaps his most significant involvement was when he served on our faculty about two years ago as a Visiting Scholar during a sabbatical from his law firm. As I recall, he was the first visiting scholar under that program. It was the concensus of our faculty and students that his classroom lectures and colloquia were stimulating, exciting, intellectual and extremely worthwhile.

It is well recognized in our community that Mr. Dwyer is a devoted family man whose personal life is without blemish. I know of his children only indirectly, but am personally acquainted with his wife who has over the years been at his side in various social and professional environments.

As a member of a recognized ethnic minority group (I am a Black person), I am particularly sensitive to the attitude that persons in public life manifest in their relation to women and ethnic minorities. In the years since 1957 when I first met Mr. Dwyer, I have not observed nor heard even the slightest suggestion of insensitivity on his part to women or minorities.

From my observation of Mr. Dwyer over the years, I know him to be a patriotic American who believes strongly in our system of laws and the Constitution of the United States.

For several years I served as a member of the American Bar Association's Committee on Federal Judiciary. I am thus familiar with the criteria used by that group in evaluating candidates for appointment to the Federal bench. Using the criteria of scholarship, integrity and judicial temperament as defined by that group, I would suggest that William L. Dwyer merits classification as "Exceptionally Well Qualified" for appointment to the United States District Court for the Western District of Washington or to any other judicial appointment for which he might be considered.

It is my firm belief that the President could not find any person better qualified and suited for service in the Federal judiciary than William L. Dwyer. I therefore respectfully urge favorable consideration of his nomination.

Respectfully yours,

CZS:s

Charles Z. Smith

cc: Honorable Slade Gorton
Honorable Daniel J. Evans
Mr. William L. Dwyer

WILLIAM R. HESSE
177 MIDPINE ROAD
CUMMAQUID HEIGHTS
YARMOUTH PORT, MASS. 02675

22

April 17, 1986

The Honorable Edwin Meese, III
Attorney General of the United States
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

It is entirely appropriate in the first instance that I introduce myself. I am William R. Hesse, the retired president and chief executive of the American Association of Advertising Agencies, New York and Washington, D.C.; the former president and chief executive of Benton and Bowles Advertising Agency Worldwide and I am currently chairman and chief executive of my own consulting firm on Cape Cod.

Permit me to say with a measure of diffidence, all of this can be confirmed and enlarged upon by your staff looking me up in Who's Who in America and Who's Who in the World if that would be helpful.

I have been deeply involved in advertising matters both from the point of view of profit; and pro bono in serving the needs of the federal government through advertising by the Advertising Council. I was secretary and board member of that organization. A number of years ago I was invited to the White House and met with President Reagan at which time he expressed his appreciation to the Advertising Council for serving such matters as Smoky the Bear, United States Savings Bonds, 55 Mile Speed Limit, Free Enterprise System, etc., etc.

The purpose of the letter, however, goes far beyond self-introduction but is to speak for a confident recommendation on the nomination of William L. Dwyer as Federal judge in Western Washington. As I understand it, he has been nominated enthusiastically by both Senators Gorton and Evans from the State of Washington.

I have known Bill Dwyer for 16 years and hold him in the very highest esteem.

He is considered in the community of Seattle and the State of Washington as a truly outstanding citizen. In the practice of law he has been most successful and

is a senior partner of one of the leading partnerships in Seattle.

Not too long ago I was invited to speak by Mr. Dwyer to the Seattle Bar Association of which he was then the president. I noticed that he was held in the highest respect by his peers. He asked me to address the Bar on the suoject of legal advertising since it was a matter of substantial interest and controversy to the legal community at that time.

I have known Bill Dwyer as a person with an unusually keen mind, with deep and far-reaching knowledge and absorbing appreciation for the law.

Among other of his substantial accomplishments has been that of teaching certain aspects of law at the University of Washington Law School.

On a personal basis he has an unusually well-knit family---attractive, contributing and supportive.

In my judgment Mr. Dwyer's assumption of the role as a Federal judge in Western Washington would be heralded as a superb nomination and a great credit to the Administration.

I could go on and on but I think it is fair to say that being as warmly supported as he is by Senators Gorton and Evans and in your own search for excellence, Mr. Dwyer would be a credit to all concerned.

Respectfully,

William R. Hesse
177 Midpine Road
Yarmouth Port, Mass. 02675

WRH:bh

GRAHAM & DUNN
ATTORNEYS AT LAW

23

TELEPHONE: (206) 624-8300

BRUCE M. PYM

64TH FLOOR
RAINIER BANK TOWER
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2652

TELECOPIER: (206) 624-8701
TELEX: 15-2631

April 21, 1986

The Honorable Edwin Meese, III
The Attorney General of the United States
U. S. Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

William L. Dwyer has been nominated by Senators Gorton and Evans for appointment as United States District Court Judge for the Western District of Washington. My purpose for writing to you is to strongly recommend Mr. Dwyer for appointment to this position.

I've known Mr. Dwyer for many years in connection with both our respective practices and bar association activities. Mr. Dwyer preceded me as President of the Seattle-King County Bar Association, and his service was outstanding. He has also served with distinction on the Board of Governors of the Washington State Bar Association and numerous other state and local bar association committees and task forces.

From a professional standpoint Mr. Dwyer is clearly one of the most prominent and well-respected trial lawyers in Seattle and the State of Washington. His initial recognition came in connection with antitrust litigation, but he has moved well beyond that. Much of what he has done has been on behalf of King County, where he has had an opportunity to be of real service to the community, as well as to ably represent his client.

Although Mr. Dwyer and I are not of the same political "persuasion," I frankly don't think that this is significant in this case. I very much hope that the President will accept Senators Gorton's and Evans' recommendations and appoint Mr. Dwyer to the Court.

Yours very truly,

Bruce M. Pym

BMPskp

THE KANSAS POWER AND LIGHT COMPANY
818 KANSAS AVENUE, TOPEKA, KANSAS 66612

WILLIAM E. WALL
Chairman of the Board
and
President

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April 15, 1986

Honorable Edwin Meese III
Attorney General
U.S. Department of Justice
Washington, D. C. 20530

Re: William L. Dwyer

Dear Mr. Attorney General,

I understand that the proposed nomination of William L. Dwyer, Esq. of Seattle, Washington as a Judge of the U.S. District Court for the Western District of Washington is now before the Department of Justice for consideration.

I have been well acquainted with Mr. Dwyer since we attended law school together at the University of Washington. I have followed his professional career in the intervening years and can attest to his splendid reputation with the Seattle and Washington Bar Associations and the State and Federal judiciary.

Bill Dwyer is an outstanding trial lawyer with vast experience in civil and criminal litigation, including the most difficult and complex cases. His intellectual ability, temperament, personality, and reverence for the law abundantly suit Bill Dwyer for this U.S. District Judgeship.

I am proud to endorse Mr. Dwyer's nomination as proposed by the two distinguished United States Senators from Washington and supported overwhelmingly by the leadership and membership of the State Bar Association.

Sincerely,

William E. Wall

William E. Wall

WEW:kc

Western Airlines

Gerald Grinstein
Chief Executive Officer

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April 14, 1986

The Honorable Edwin A. Meese III
The Attorney General
Washington 25, D. C.

Dear Mr. Attorney General:

I understand that the Senators for Washington State, Slade Gorton and Dan Evans, have submitted to you the name of William Dwyer for appointment to the Federal District Court Bench.

Bill Dwyer is an outstanding lawyer, held in extremely high regard by members of the Bench, the Bar and the general public in the Pacific Northwest. It is a well-founded regard, based on a reputation for integrity and fairness, and one which will result in careful and deliberate application of the law as a District Court Judge should he be favored by your selection.

As you are familiar with the overwhelming support that occurred when his name was submitted to you, you can anticipate the extremely favorable reaction that will redound to the benefit of the Department of Justice and to this administration when Bill Dwyer is appointed and confirmed.

I appreciate very much your consideration of my views.

Very truly yours,

Gerald Grinstein

:jr

bcc: Senator Slade Gorton
Senator Daniel Evans
Senator Jake Garn
Senator Orrin Hatch
Manny Rouvelas

Post Office Box 92005 World Way West Center Los Angeles, California 90009 (213) 216-3511

Law Office of
COUNCIL & CROSBY
A Professional Corporation
484 North Franklin Street
Juneau, Alaska 99801

William T. Council
David C. Crosby

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(907) 586-1786

April 11, 1986

The Honorable Edwin Meese, III
Attorney General
United States Department of Justice
Washington, D. C. 20530

Re: Appointment of William Dwyer
(Western District of Washington)

My Dear Mr. Attorney General:

I am writing this letter in support of William Dwyer's nomination to be a United States District Court Judge, for the Western District of Washington.

I have read some of the press accounts of Mr. Dwyer's nomination, including the highly laudatory comments of Washington's two Republican Senators, Slade Gorton and Dan Evans. As a former trial lawyer practicing in the City of Seattle, I assure you that the Senators' praise and the enthusiastic support of virtually the entire legal community in Seattle are well founded.

Given the unanimity of opinion with respect to Mr. Dwyer's credentials, I would hardly think this letter necessary but for reports that Mr. Dwyer's nomination is being opposed by some who question whether his personal beliefs are consistent with conservative principles. In response to these critics, I would like to relate what I know of the personal and professional commitment of Bill Dwyer to the highest ideals of justice and human decency.

Approximately one year ago, my 14 year old son succumbed to the lure of drugs and alcohol and left home to join the growing number of "street kids" who were enjoying the then-flourishing Seattle teen entertainment scene. The magnet for these children was a teen-age discotheque known as the "Monastery." Its proprietor, George Freeman, was a two-time convicted felon, who had been successfully prosecuted three times in Seattle for distributing liquor to minors. The establishment had been in operation since 1976, and Freeman boasted that he was untouchable because he was "black, gay, and a minister of the Universal Life Church."

Because of the lax juvenile laws, this man continued to operate an all-night entertainment establishment where adolescents as young as ten and eleven years old mixed with an older, predominantly gay, clientele.

Mr. Freeman's sense of invulnerability was not entirely misplaced. When I first complained to the police, they indicated that they would like nothing better than to put Mr. Freeman out of business, but that he was "protected by the Mayor and the gay community." Outraged, my wife and I formed a parents' organization called "Parents in Arms." Bill Dwyer was present at the formation of this group, and provided hundreds of hours of free legal advice as we plotted strategy to close down the Monastery and reform the juvenile laws in Seattle and the State of Washington. I am sure that without Mr. Dwyer's highly visible involvement, we would have been regarded as a bunch of right-wing parents who couldn't control their own kids and wanted to spoil the fun for everyone else.

I am sorry to say that Mr. Dwyer and his family paid a price for his unstinting support. On two separate occasions, both Mr. Dwyer and I received death threats that were directed not only at ourselves, but at our spouses and children. Bill never let up. His credentials and credibility gave us access to the highest decision makers in the City of Seattle. Ultimately, we were able to force an intensive police investigation that resulted in closure of the Monastery. In the course of the trial the entire history of drug dealing, with suggestions of male and female teenage prostitution rings and sexual exploitation of minors by adults, came to light.

At the same time that we were moving on the legal front, Bill was also advising Parents in Arms on the drafting of an ordinance to regulate teenage dance halls, imposing licensing requirements, age limits and reasonable closing hours. The cause was not a popular one in some segments of the liberal community, and we were attacked repeatedly by those who feel that minors should have all of the constitutional rights of an adult, including the right to destroy themselves with drugs and alcohol, if that is their desire.

There is a more personal side to this. Bill Dwyer has walked the streets of Seattle at midnight looking for my lost child. As a result of my experiences in the last year, including my great disappointment at the changes in the juvenile laws over the past several decades that have made it virtually impossible for parents to protect their children, my own historically liberal, democratic views have

undergone some fundamental changes. I doubt that I could subscribe to any "litmus test" for idealogical purity -- whether liberal or conservative. If there is a litmus test for human decency and moral courage, however, Bill Dwyer is the standard by which I would judge all others.

I am happy to say that my son is with us now. I also take some pride in saying that the City of Seattle is a better place with the Monastery gone and a reasonable teenage dance hall licensing ordinance in place. I thank Bill Dwyer in large part for both.

I know that you have seen other judicial candidates, and that you have undoubtedly seen more than your share of form letters supporting or attacking these candidates. I write to you from the heart when I say that I cannot imagine a candidate more qualified by his unquestioned legal abilities, and his humanity, to assume that most awesome of responsibilities -- sitting in judgment on others.

Sincerely yours,

COUNCIL & CROSBY

David C. Crosby

PeoplesBank

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Joshua Green III
Chairman of the Board and Chief Executive Officer
206/344-2238

April 11, 1986

The Honorable Edwin Meese III
Attorney General of the United States
Department of Justice
Washington, D.C., 20530

Dear Sir:

I understand that you are contemplating appointing Mr. William Dwyer of Seattle, Washington to a Federal Judgeship with the U. S. District Court, and that some background commentary might be helpful. Several years ago our bank became involved in litigation of a class action nature which could have been extremely detrimental to our future. We believed we needed the strongest legal representative possible and contemplated retaining attorneys from anywhere in the country.

Upon consulting leading attorneys in Seattle we received unanimous recommendation that Mr. Dwyer would be their first choice. Two attorneys commented that if they personally were involved in serious litigation that they would immediately go to Mr. Dwyer. The litigation was extremely complex and involved several law firms with different motivations. Mr. Dwyer's diplomacy in working the bank through the conflicts between the various firms was outstanding. Eventually, Mr. Dwyer guided the bank to a very satisfactory settlement of the problem.

During the several years of working with him on this major problem, I was extremely impressed by the total respect with which he was held by all parties involved in the litigation. Not only did he show an excellent understanding of the law, but most important, exhibited the highest ethical standards at all times.

Following the settlement of the lawsuit we have referred several organizations to Mr. Dwyer when they had difficult problems and we were particularly impressed with his handling of the launching of the King County Convention Center. Although I will be sorry to see Mr. Dwyer leave private practice, I cannot think of a stronger candidate from the Pacific Northwest.

I understand Mr. Dwyer is somewhat liberal in his political views, but I believe you would find most conservative Republican's in this area that know him would whole heartily support his candidacy.

If I could be of any further help to you in your consideration of Mr. Dwyer I would welcome the opportunity.

Sincerely,

Joshua Green III

Peoples National Bank of Washington
1414 Fourth Avenue
P.O. Box 720
Seattle, WA. 98111-0720

JGIII:vcl

Ashbrook Baking Co.

1416 10th Avenue Seattle, WA 98122 (206) 325-4900

Bakers of Rainier Farms Breads 28

June 26, 1986

The Honorable Edwin Muse III
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General,

As a life long Republican and contributor to the party, it is a great pleasure to write to you in support of the William L. Dwyers nomination to be a Federal Judge for the Western District of Washington to replace Judge Donald S. Voorhees. Washington State's two Republican Senators, Slade Gorton and Dan Evans, have done themselves and their constituents proud by suggesting to you a man of the distinction and character of William Dwyer.

Bill Dwyer has had a notable career as a lawyer in both the practice of private and public cases. He is a person of great intellect and is diligent in doing an extreme amount of home-work in all his endeavors. This consciousness has been a prime reason for his success as a lawyer and person.

To have William Dwyer's nomination be successful will strengthen the Washington Republican Party and our two Senators as it is viewed by our people as a fair and proper appointment of a highly qualified person. I strongly encourage you to add your endorsement.

Very truly yours,

Leconie Stiles Jr.

Leconie Stiles Jr.
President
Ruth Ashbrook Bakery

CC: Honorable Slade Gorton
United States Senate
513 Senate Hart Office Bldg
Washington D.C. 20510

LAW OFFICES OF
Johnson, Lane & Crawford

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W. ROGER JOHNSON
EDWARD M. LANE
M. FRANK CRAWFORD
PHILIP R. BLOHM
JOANNE HENRY
RICHARD A. FRANGAS
JOHN L. NICHOLS
MARY KAY DOHERTY

FIRST INTERSTATE PLAZA
SUITE 1950, P.O. BOX 1086
TACOMA, WASHINGTON 98401
(206) 383-2764

May 22, 1987

Senator Howard Baker
Assistant to the President
The White House
Washington, D.C. 20500

Re: William Dwyer

Dear Senator Baker:

For many months I have considered sending this letter. I anticipated by this time that William Dwyer's nomination would have taken place, and he would now be seated as a Federal District Judge. I read in the Seattle Post Intelligencer this morning that Senator Dan Evans feels a sense of frustration about this appointment and is making an appeal directly to you. I would like to add my name as a supporter of William Dwyer for this position.

I am presently serving as one of ten members of the Board of Governors of the Washington State Bar Association. I previously served as a delegate to the Ninth Circuit Judicial Conference and am a board member on the Federal Bar Association for the Western District of Washington. I was also one of those listed as a potential nominee for appointment to the Federal District judgeship for the Western District of Washington at Tacoma. I have known William Dwyer for many, many years. He served with me as a delegate to the Ninth Circuit Judicial Conference. We worked together during his term of office as a member of the Board of Governors of the State Bar Association. He has been active in the Federal Bar Association. Additionally, he has been an active practitioner, and a successful one at that, before the Federal District Court, the Ninth Circuit Court of Appeals, and the Supreme Court of the United States.

I am a Republican, and I believe a conservative one as well. Bill Dwyer is a Democrat with probably more liberal views than I maintain. I consider him to be the outstanding choice for the federal district judgeship. He is a bright, articulate, well read, and persuasive lawyer. On the merit scale, he has to rate a triple "A." I would implore you to set the wheels in motion to have Bill Dwyer nominated for this Federal District judgeship.

96/JD

The views I have expressed to you are shared by the predominance of the lawyers and judges who know him. We all feel he is an outstanding choice, and support Senator Evans attempts to move this along. I would be happy to provide you with any additional information you might desire.

Yours very truly,

Edward M. Lane

EML:jd
cc: Senator Dan Evans
Senator Brock Adams
Senator Robert Dole
Representative Norm Dicks

96/JD

RAYMOND C SWANSON /S
DANIEL C BLOK
RICHARD L CLEVELAND /S
RICHARD J HOWARD /S
MICHAEL R RATTON
JACK C ALHADEFF
JOHN E IVERSON
DAVID H OSWALD
JOEL H PAGET
WILLIAM R FRIEDHOFF JR
GORDON W JACOBSON
JERRY H RINGINGER
MICHAEL C TROMQUET
MORET G PRIEST

RYAN, SWANSON & CLEVELAND
LAWYERS
32ND FLOOR THE BANK OF CALIFORNIA CENTER
SEATTLE, WASHINGTON 98164
AREA CODE (206) 464-4224

JOHN E RYAN JR (1982)
RICHARD K BUSH (1973)
LAWRANCE S CARLSON (1968)
WILLIAM D ABERDEEN (1984)

KEVIN J COLLETTE
ROGER J KINDLEY
JAMES H SHAKER
THAD TIEDT
RICHARD J HYATT
ROBERT J CURRAN
MATTHEW W LYNCH
PHILIP W ROBERTS
MICHELE R HANKINS
SIMON J BONE
CRAIG E BOHUNAK
ROBERT G CONDIE
FELIX LANDAU

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May 22, 1987

REPLY OUR FILE NO

The Honorable Howard Baker
Chief of Staff and
Assistant to the President
The White House
Washington, D.C. 20500

Dear Senator Baker:

I remember vividly the outstanding talk you gave to the Tort and Insurance Practice Section of the American Bar Association a few years ago, and the pleasure which my wife and I had in meeting and chatting with you. I was then a Council member of the Section, and we were all very much impressed with your obvious interest in maintaining the high standard of professionalism of the Bar to which we are dedicated.

Circumstances have now given you an opportunity to make a very important contribution to the quality of the Bench and Bar, and the interests of the people of the State of Washington. William Dwyer's appointment to the Federal District Court for the Western District of Washington is now again before the President. As the enclosed clipping from the Seattle Post-Intelligencer indicates, the District Court is buried in work and is desperately in need of the new judge whose appointment has languished for many months. Bill Dwyer is generally considered to be the best trial lawyer in Seattle. He is universally respected and admired by the Bench and the Bar of this State. He has received virtually every honor which other lawyers can bestow on one of their members.

As far as I know, Bill has no intrusive political or ideological orientation. The opportunities for the valid interjection of ideological or political considerations in the work of a District Court Judge are extremely rare. What is called for daily is the ability to grasp the facts, understand the issues, recognize the maneuvers of trial lawyers, understand

and apply the law, be fair-minded and decisive. Bill Dwyer has all those qualities to a superlative degree. He has the potential of becoming not simply a good judge, but a great judge.

I am sure that his appointment would be applauded by virtually all the members of the Bar in this State and would reflect credit on the Administration.

I hope you will use your great influence to assure that his appointment is given the full and fair consideration which it deserves.

With best wishes,

Sincerely,

Daniel C. Blom

DCB:cam

Enclosure

RICHARD J. DOLACK
JOHN P. HANSLER
JOHN W. DAYHOFF
THOMAS J. WEST
STEVEN R. LEVY
CHERYL R. ROBBINS
JOSEPH J. LORAN
ROBERT H. ROWAN

DOLACK HANSLER
PROFESSIONAL SERVICES CORPORATION
ATTORNEYS AT LAW
11TH FLOOR-SEAFIRST CENTER
950 PACIFIC AVENUE
TACOMA, WASHINGTON 98402

TACOMA [206] 383-3031
SEATTLE [206] 838-9061

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IN REPLY REFER TO
OUR FILE NO.

June 12, 1987

The Honorable Edwin Meese
Attorney General of the United States
Department of Justice
Constitution Avenue between 9th and 10th Streets
Washington, D.C. 20530

Re: William Dwyer

Dear Mr. Meese:

As a practicing attorney, I highly recommend that William Dwyer be appointed United States District Judge for the Western District of Washington.

My own background and experience are that I was a law clerk for Judge Homer T. Bone, of the United States Court of Appeals for the Ninth Circuit, 1952 to 1954; Assistant Attorney General, State of Washington, 1954 to 1956; practicing attorney, Tacoma, Washington, 1956 to present. I am one of two senior partners in a law firm of some ten attorneys and sixteen support staff. I believe those who know me would say that I am a competent attorney and a conservative, evangelical Christian. I have been visible in a leadership role in community-wide Christian events.

I favor the appointment of William Dwyer as judge because I know him as an outstanding attorney. I have followed his career. When I needed to associate the best attorney I could find as a trial attorney in an important and difficult case, I associated Dwyer. He performed with his usual meticulous preparation and brilliance at trial.

Bill Dwyer was a classmate of mine at the University of Washington Law School, but we are not close friends. We seldom see or communicate with each other. I do know his work.

I believe William Dwyer would make an enormous contribution toward excellence in the administration of justice in the federal courts. He has high intelligence. He is a thorough and profound scholar. He has integrity, compassion, and energy.

Some of my friends in the evangelical Christian community have shown me literature published by opponents of Dwyer's nomination. The literature I saw was scurrilous, untrue, and unfair. It accused him of leftist leanings. I know this is untrue, although he is more "liberal" politically than I am, and perhaps on the

"liberal" side. I also know that conservatives and liberals alike trust his fairness and his judgment, and both seek his counsel. I believe he would faithfully and impartially administer justice as a judge.

One of the cruder and most unfounded allegations against Dwyer is that he favors child pornography. I know this to be untrue. The charge grew out of legal advice and a legal opinion he rendered the Seattle library concerning a book on sex education. This advice and opinion had the agreement, incidentally, of the Republican corporation counsel of Seattle. I personally found the book objectionable as to content, and I believe Dwyer did also. The question was the legality of the book and the library's dealing with it, not whether the book was socially desirable.

I, and many others concerned with the quality of justice, are puzzled that, although two Washington state Republican senators and one Democratic senator have urged Dwyer's nomination, the appointment is not forthcoming. We would hope that this failure of appointment is not due to partisanship. I applaud the appointment of highly qualified persons to be judges when those persons happen to be "conservatives." I would deplore the failure to appoint a man of Dwyer's caliber because a label of "liberal" has been attached.

I would request the appointment of William Dwyer as United States District Judge for the Western District of Washington.

Very truly yours,

JOHN P. HANSLER

JPH:ayh

Library Information

To:
For: IMMEDIATE RELEASE - September 26, 1986
RE:
For further information contact: Diane Turner
625-4984

STATEMENT OF SEATTLE PUBLIC LIBRARY BOARD

This statement is issued by the Seattle Public Library Board to set forth the facts in regard to the Board's decision last year to retain the book Show Me! in the Library's collection. A petition currently being circulated in Seattle and elsewhere in the state contains a number of false statements about the action taken by the Board, the contents of the book, the status of the law, and the beliefs and advice of William L. Dwyer, who served as special counsel in this matter. It is appropriate that those misstatements be corrected, and the Library Board's role be made clear.

The Board, not Mr. Dwyer, decided to keep Show Me! in the Library's collection. Mr. Dwyer, as counsel to the Board, was not asked whether the Library should retain the book. That was not his function. Rather, his opinion was asked as to whether the Library would be in violation of any law if it retained the book, and what the Board's position would be if a court action of some kind were commenced.

In answering the Board's legal questions, Mr. Dwyer mentioned his strong support for the laws against child pornography, and said that they represented a great improvement in the legal protection of children. The advice he gave was conscientious, faithful to the law, and correct.

The Board's decision to retain the book in the Library's collection was reached in May, 1985. Since then, the King County Prosecuting Attorney, whose judgment is respected by all concerned, has announced that he agrees with the Board's decision.

No legal action against the book has been taken by any prosecuting authority, or by any private citizen.

No court anywhere in the country has found it illegal to publish, sell or distribute Show Me!.

Every other library board that has considered the question, to the best of our knowledge, has reached the same conclusion that we did -- that the book should be kept in the collection until and unless a court of law were to rule that it should not be there.

Seattle Public Library
Community Information Officer Diane Turner 625-4984
1000 Fourth Avenue, Seattle, Washington 98104

CL-03

It appears that some citizens may have the mistaken idea that the Board's action meant that we and our counsel approved or endorsed the book. That is not the case and is not our function. All we decided was that, in our best judgment, the state and federal statutes did not require its removal. Today, nearly one and one-half years later, that decision still appears to be correct.

Show Me! is a sex education book produced in Germany in the early 1970's by a Lutheran church-sponsored publishing company. It was published in this country by St. Martin's Press in 1975 and is kept in many public libraries. The book depicts nudity and sexuality for the legitimate purpose of education. The photographs were taken in Germany in a professional studio with parental consent. Many educators and psychologists have found the book to be useful and valuable in their work. However, the book is controversial and some maintain that it should be suppressed.

In early 1985 library boards in Western Washington found themselves confronted with conflicting arguments about Show Me!. Some citizens claimed that the book violated the laws against child pornography and should be removed from the collections. Others argued that Show Me! was legal and that their rights would be abridged if it were removed. The Kitsap County Regional Library decided in February, 1985 to keep the book in its collection. The Timberland Regional Library, at Olympia reached the same decision in March, 1985. The Seattle Public Library was confronted with the same arguments and retained Mr. Dwyer to provide legal advice to aid us in reaching our decision.

The Board conducted a thorough review, invited comments from the public and considered several hundred letters which were received pro and con on the subject. We were assisted by City Attorney Doug Jewett as well as by Mr. Dwyer. The main reasons for our conclusion that a court of law would probably find that the Library was not acting in violation of any statute by keeping Show Me! in the collection were the following:

- The text of the book is serious and educational and clearly is not within the scope of any law prohibiting expression;

- It is doubtful that any of the photographs in the book would be found to be within the categories prohibited by the state or federal child pornography statute;

- Both the state and federal statutes are accompanied by disclaimers of any intent that they would apply to legitimate works of sex education. In the state statute this appears in the law itself, and in the federal statute the disclaimer appears in a statement by the U.S. Department of Justice which is part of the legislative history; and

- Even if the statutes were otherwise, the book would have a substantial claim to protection under the freedom of speech guaranty of the First Amendment to the U.S. Constitution.

The Seattle Public Library has two copies of Show Me!. Both are kept on reserve and cannot be removed from the reference room.

Our decision to retain the book in the collection was made carefully and in accordance with our duty to oversee a library in a free, diverse and open society.

It was Mr. Dwyer's reputation as a defender of the rights of children and disadvantaged persons, as well as for outstanding legal ability, that led us to ask for his help. He performed a public service in advising the Library. In the process he demonstrated a clear grasp of the law and a sensitive understanding of the interests of all concerned.

BELLEVUE JOURNAL-AMERICAN
7/25/87

Dwyer right for judgeship

The fact that federal judges are appointive rather than elective positions certainly doesn't reduce the politicking entailed in their selection. There is ample evidence in the drawn-out saga of Seattle's William Dwyer, whose approach to the bench seems finally assured.

It was consequences of Dwyer's nomination by former Sen. Slade Gorton — including Gorton's subsequent vote-trading in an effort to secure the position for Dwyer — that first fueled Brock Adams' upset victory last November, although Gorton and Adams agreed on Dwyer's suitability. And it apparently is concern about the prospects of the White House's latest Supreme Court nominee that finally propelled Dwyer's nomination, which now awaits Senate approval.

It is no secret that Dwyer's Democratic Party links made his appointment less than a priority of the Reagan administration and the Justice Department. Conservative Republicans in this state, too, are unhappy that two Republican senators from Washington so relentlessly pushed the nomination.

Perhaps lost in the politics is the more widespread belief among Dwyer's peers that he will be an excellent jurist. On record in his support are 29 professors of the University of Washington School of Law, including the dean. The board of governors of the Washington State Bar Association last year passed a resolution backing Dwyer.

Dwyer's legal skill is well-known in this region. Although he first gained celebrity for his role in a famous libel trial, he has waged legal battles with more obvious legacies. Dwyer represented the state in its lawsuit against the American League after the Seattle Pilots left town — eventually resulting in the Seattle Mariners franchise. And he represented King County in its breach of contract suit against a Kingdome contractor, winning millions of dollars in damages.

Dwyer opponents promise an all-out campaign to torpedo the nomination when it comes before the Senate. But with this state's Sens. Adams and Dan Evans on his side, and the Robert Bork nomination to the Supreme Court on the sidelines, the outcome appears finally to be settled.

SEATTLE POST-INTELLIGENCER
7/26/87

'Go' for Judge Dwyer

The on-and-off nomination of William L. Dwyer for a federal district court judgeship happily switched to "on" last week. One of Seattle's most distinguished attorneys now looks a sure bet to don the black robe this fall.

Dwyer will succeed Judge Donald Voorhees. His ascendance to the bench will help ease the log-jam of cases piling up here — thanks to the tireless efforts of Sen. Dan Evans, who overcame stiff-necked opposition from conservative Republicans including Attorney General Ed Meese.

Democrat Dwyer, endorsed by the American Bar Association, should easily win confirmation (by early fall) with the Democrats holding a majority in the Senate.

Meanwhile, Evans continues to express interest in nominating former Sen. Slade Gorton to the 9th Circuit Court of Appeals. We like this idea. Gorton is a highly regarded attorney, who served three terms as Washington state's attorney general. While a senator, Republican Gorton earned high marks for his solid craftsmanship in drafting legislation. Now in private practice here, Gorton is well qualified to sit on the federal bench.

There is no reason to conclude that Gorton would not provide judicial service as distinguished as Dwyer's promises to be. We encourage Evans to pursue, as with Dwyer, a second distinguished nomination as Gorton's would be.

GOOD NEWS FOR STATE

Dwyer nomination reaches the Senate

WHILE he was testifying in the Iran-contra hearings yesterday, Attorney General Edwin Meese was delivering on a promise he'd made to Sen. Dan Evans on an unrelated matter — an action that's good news for this region: Late in the afternoon the Reagan administration's nomination of William Dwyer to be a U.S. District Court judge was officially delivered to the Senate.

Worried because the nomination had been snagged for months, Evans recently conferred with Meese. He asked for action, noting that Dwyer, a Seattle attorney, is one of the most esteemed lawyers ever to come up for a judgeship and that the Western Washington federal courts, awash in untried cases, need him on the bench.

Republican Evans and Democrat Brock Adams at once began asking colleagues for early confirmation by the Senate Judiciary Committee.

Dwyer's nomination has drawn fire from a few Washington conservatives just as, ironically, the nomination of Judge Robert Bork to the U.S. Supreme Court has drawn fire from liberals across the nation.

Politically, those nominations have "absolutely nothing to do with each other," says Evans. Indeed, the Dwyer and Bork nominations should go forward promptly and be considered on the judicial and other merits of each man.

Seattle Times 7/29/87

Senator LEAHY. And we did invite all the so-called anti-Dwyer witnesses who asked to testify. None of them chose to accept the invitation. I suspect that says volumes in itself.

Senator Adams.

Senator ADAMS. Thank you, Mr. Chairman, distinguished members of the committee.

As a former U.S. Attorney of the Western District of Washington, and a member of that bar for 35 years, it gives me a great deal of pleasure to appear today with Senator Evans before this distinguished committee, to recommend the confirmation of William L. Dwyer as U.S. District Judge for the Western District of Washington.

I personally have known Mr. Dwyer and his wife, Vasiliki, for over 30 years, and can say from personal experience that he is one of the most honorable, fair-minded individuals that I know, as well as a distinguished, experienced trial attorney.

The advise and consent which the Senate must give to lifetime appointments to the Federal Judiciary, Mr. Chairman, is one of the most important shared functions of the President and the Senate.

Our citizens have a right to expect that those appointed to the bench, as the third branch of our constitutional government, will be intellectually equipped for the job, but even more important, Mr. Chairman, that they will be fair-minded and patient, and that they will be suited, by temperament, to exercise the truly awesome power that our society gives to members of the Judiciary.

The decisions of freedom or prison, the rights of individuals to property and reputation, and, yes, life and death itself, is placed in the hands of these individuals.

It is for these reasons that I have joined with Senator Evans in our complete and unreserved support of Bill Dwyer. He has distinguished himself as a lawyer of extraordinary talent, of intelligence, and a man of scrupulous integrity, honesty and courage. I cannot think of anyone who is better suited to fill this judicial vacancy.

I should note, as Senator Evans has, that the ABA has rated him "exceptionally well qualified." It is my understanding he is the first nominee with this high rating to come before this committee during this session of Congress.

Bill Dwyer's qualifications for the Federal bench are amply demonstrated by another thing, Mr. Chairman, and members of the committee. He has a remarkably broad range of community leaders who have endorsed his nomination. Democrats, Republicans and Independents alike, law-enforcement leaders, including the King County prosecuting attorney and the Seattle chief of police, support his nomination, as do the Washington State Bar Association, the Seattle-King County Bar Association and the Federal Bar Association for the Western District of Washington.

As Senator Evans said, the dean and 28 members of the University of Washington School of Law have written that Mr. Dwyer is the best-qualified person in the State of Washington.

But that support is not surprising, Mr. Chairman, considering Bill Dwyer's record. He is a renowned trial lawyer for over 30 years, in a broad array of legal areas. His knowledge of the criminal law stems from his service in the Judge Advocate General's Corps, where he tried general court martial cases involving every-

thing from prosecutions for murder, armed robbery, assault, and other major crimes, but he has also, in his civil practice, as a partner in one of Seattle's leading law firms, tried over 250 cases through to judgment or verdict, and many others resolved by settlement prior to trial, or by motion.

He is an acknowledged expert in anti-trust matters and first amendment litigation. He has tried both large and small cases in many fields, including torts, contracts, domestic relations, and construction law.

The other fact, Mr. Chairman, that I think is important for all of us as we are passing on these nominees—and we will have a number of them during this session—is that Bill has handled many cases of civic importance to the city.

Senator Evans has mentioned just one, where he was asked for an opinion, by the Seattle Public Library Board. He gave a legal opinion on the book "Show Me!" and that is exactly what he did, no more, no less.

I would like to mention one other case because people in our State are very grateful to him for this. He represented, in 1967, the State of Washington, when they were going to remove the baseball franchise, Mr. Chairman, and that becomes very important to a lot of people. And he won the case of *State of Washington* v. *the American League,* and the Seattle Mariners are still in Seattle.

Senator LEAHY. No wonder he is so popular.

Senator ADAMS. We, in Washington, are grateful to him for that.

Mr. Chairman, in reviewing Bill Dwyer's career, what really strikes me is his devotion to the American legal system, and that is the point that I stated one case as an example. He has a devotion to the jury system, in particular, and it is shown by his activities that are in the legal profession, but are outside of day to day trial of cases.

From 1982 to 1985, Bill Dwyer was a member of the board of governors of the Washington State Bar Association. He served a term as president of the Seattle-King County Bar Association in 1979 and 1980. He has taught law as an adjunct professor of law at the University of Washington Law School, and he is currently a member of that school's visiting committee.

He also continues teaching in continuing legal education. Perhaps more than any other activity, Bill Dwyer demonstrates his qualities of compassion through his pro bono work. I have just come out of private practice, Mr. Chairman, and I can tell you that getting lawyers, and particularly senior partners to do pro bono work is a real problem of the bar association and of partnerships.

But Bill has done this all of his life. While he was president of the bar association, he was instrumental in helping establish the Volunteer Legal Services Program for all lawyers in King County to donate legal service.

Bill has also handled many pro bono cases himself, involving claims of infringement for constitutional rights, and, yes, defending unpopular criminal defendants.

His pro bono work included—Mr. Chairman, I wanted to mention this because of the statements that have been made by the Chairman, and so on, as to Bill's representation on the particular book, "Show Me"—representing a group known as Parents In Arms, and

I believe you will hear more about this from other witnesses, but I will just briefly state, that through Bill's efforts, and the cooperation of the Seattle police, and the prosecuting attorney, Parents in Arms was able to obtain the closure of a teenage nightclub that was responsible for introducing many children in our area to alcohol, drugs, and illegal activities. Our community is grateful to him for this.

I would just like to close by urging the committee, in the strongest terms, to confirm the nomination of Bill Dwyer to be a Federal Judge.

As Senator Evans said, Judge Voorhees, of whom we are very fond, is just simply not able to accept any more cases now, and I just have received a letter—and Mr. Chairman, I would like to ask unanimous consent that it be included in the record—from an old friend who is the Chief Judge of the Western District of Washington.

It is a copy of his letter indicating that he is going on to senior status, which means that we have now lost two judges, and if that could be included in the record, Mr. Chairman, it will indicate the reason for the final statement I make.

[The information of Senator Adams follows:]

WALTER T. McGOVERN
CHIEF JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON 98104

August 31, 1987

Honorable Brock Adams
United States Senate
513 Hart Senate Office Building
Washington, D. C. 20510

Dear Brock:

For your information, I enclose a copy of the letter which I have today mailed to the President of the United States.

Under the terms of 28 U.S.C. 371 (d), the President may appoint, with the advice and consent of the Senate, a successor to my position from and after September 30, 1987.

I will continue my judicial service here at the Court but at a reduced schedule.

My kind personal regards.

Sincerely,

Wally

WALTER T. McGOVERN
Chief United States
District Judge

Enclosure

WALTER T. McGOVERN
CHIEF JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON 98104

August 31, 1987

The President
The White House
Washington, D.C. 20544

Dear Mr. President:

It has been an honor and a privilege for me to serve as a United States district judge for the Western District of Washington since assuming that office on May 14, 1971.

Having now attained the age of sixty-five years and having served in that judicial capacity for more than the last fifteen years continuously, I now elect to take senior status as permitted under 28 U.S.C. § 371(b).

It is my desire that the effective date of this change of judicial status be September 30, 1987.

Yours respectfully,

Walter T. McGovern

WALTER T. McGOVERN
Chief United States
District Judge

Senator ADAMS. And that is, that as of August 1st, 1987, there were 2,141 civil cases pending in the Western District of Washington. The average civil case now takes 3 years to get to trial. With Judge Voorhees in senior status, and Judge McGovern electing senior status, it will further exacerbate this problem.

Therefore, I hope we will have a speedy confirmation, Mr. Chairman. The people of our State need, and deserve it, and we could not have a finer candidate.

I thank the committee for its patience in listening to us, and we appreciate it.

[The statement of Senator Adams follows:]

U.S. Senator
BROCK ADAMS
of Washington

Committees
Commerce, Science and Transportation
Foreign Relations
Labor and Human Resources
Rules and Administration

FOR IMMEDIATE RELEASE
September 11, 1987

CONTACT: Barbara Smith
or Emily Love
(202) 224-0228

SENATOR BROCK ADAMS
INTRODUCTORY REMARKS
CONFIRMATION HEARING OF WILLIAM DWYER
SENATE JUDICIARY COMMITTEE

As a former United States Attorney of the Western District of Washington and a member of that Bar for 35 years, it gives me great pleasure to appear before this distinguished Committee and recommend confirmation of William L. Dwyer as a United States District Judge for the Western District of Washington.

I have personally known Mr. Dwyer and his wife Vasiliki for over 30 years and can say from personal experience that he is one of the most honorable, fair-minded individuals that I know, as well as a distinguished, experienced trial lawyer.

The Advise and Consent which the Senate must give to lifetime appointments to the Federal Judiciary is one of the most important shared functions of the President and the Senate. Our citizens have a right to expect that those appointed to the Bench as the Third Branch of our Constitutional government will be intellectually equiped for the job, that they will be fair-minded and patient, and that they will be suited by temperment to exercise the truly awesome power our society gives to the Judiciary. The decisions of freedom or prison, the rights of individuals to property and reputation, and yes, life and death itself, is placed in the hands of these individuals.

It is for these reasons that I have joined with Senator Evans in our complete and unreserved support of Bill Dwyer. He has distinguished himself as a lawyer of extraordinary talent and intelligence and a man of scrupulous integrity, honesty and courage. I cannot think of anyone else who is better suited to fill this judicial vacancy.

I should note as well that Bill Dwyer has been rated "exceptionally well qualified" by the ABA, their very highest rating. He is the first nominee with this high rating to come before this Committee in this Session of Congress.

ADAMS/ADD 1
September 11, 1987

Bill Dwyer's qualifications for the Federal bench are amply demonstrated by the remarkably broad range of community leaders who have endorsed this nomination -- Democrats, Republicans, and Independents alike. Law enforcement leaders including the King County Prosecuting Attorney and the Seattle Chief of Police support his nomination, as do the Washington State Bar Association, the Seattle-King County Bar Association and the Federal Bar Association for the Western District of Washington. The Dean and 28 professors at the University of Washington School of Law have written that Mr. Dwyer "is the very best qualified person in Washington to be appointed to a federal trial court."

This support is not at all suprising, considering Bill Dwyer's record. He is a renowned trial attorney with 30 years of experience in a broad array of legal areas. His knowledge of criminal law stems both from his law practise and his service in the Judge Advocate General's Corps, where he tried general court martial cases, including prosecutions for murder, armed robbery, assault and other major crimes. In his civil practice as a partner in one of the leading law firms in Seattle, Mr. Dwyer has tried over 250 cases through to judgment or verdict, with many others resolved by settlement or motion prior to trial. He is an acknowledged expert in antitrust matters and First Amendment litigation. He has tried both large and small cases in many other fields as well, including torts, contracts, domestic relations, and construction law.

Bill has also handled many cases of civic importance to the City of Seattle and the State of Washington, and I would like to mention just one. In 1967, Bill represented the State of Washington and King County in State of Washington v. American League, a case which resulted in the return of a baseball franchise to the City of Seattle, now the Seattle Mariners. We in Washington are all grateful to him for that.

In reviewing Bill Dwyer's career, what really strikes me is his devotion to the American legal system, and the jury system in particular. This dedication is shown in his practice and in his extra-legal activities. From 1982 to 1985, Bill Dwyer was a member of the Board of Governors of the Washington State Bar Association, and he served a term as President of the Seattle-King County Bar Association in 1979-1980. He has taught law as an Adjunct Professor of Law at the University of Washington School of Law and he is currently a member of that school's Visiting Committee. Also, he continues his teaching through Continuing Legal Education programs in the State.

Perhaps more than any other activity, though, Bill Dwyer demonstrates his qualities of compassion and commitment through his pro bono work. While he was President of the Bar Association, he was instrumental in establishing the Volunteer Legal Services program, through which lawyers in King County donate legal advice and representation to persons who need help but cannot afford it. Mr. Dwyer has also handled many pro bono cases himself. These have included cases involving the public interest, claims of infringement of constitutional rights and unpopular criminal defendants.

His pro bono work has included representing a group known as Parents in Arms. I believe that you will hear more about this from other witnesses this morning, but through Bill's efforts and the cooperation of the Seattle police and prosecuting attorney, Parents in Arms was able to obtain the closure of a teen-agers' night club that was responsible for introducing many children to alcohol, drugs and illegal activities.

Let me close by urging you in the strongest terms possible to confirm the nomination of Bill Dwyer to be a Federal judge. Judge Donald Voorhees, the District Court Judge who Mr. Dwyer would be replacing, retired to senior status in January of 1986. Since that time, the backlog of cases has continued to grow in the Western District so that the average civil case now takes three years to get to trial. As of August 1. 1987, there were 2,141 civil cases pending. Unfortunately, the recent election by another Western District Judge, Walter McGovern, to take senior status has even further exacerbated the caseload problem in the Western District and makes it all the more important to ensure the speedy confirmation of Bill Dwyer.

Senator LEAHY. Thank you very much, Senator Adams, and Senator Evans. Mr. Dwyer, you are here with two of the most respected Members of the Senate, and their words carry that much added weight.

Incidentally, I know Senator Adams and Senator Evans have to leave, but before they do, are members of your family here with you, sir?

Mr. DWYER. Yes, Mr. Chairman. Thank you. With me today are my wife, Vasiliki, and our daughter, Joanna.

Senator LEAHY. It is nice to see you both here.

Mr. DWYER. And we also have two sons, Tony and Charlie, who have business on the West Coast and cannot be here today.

Senator LEAHY. And make sure they get a copy of the transcript so they can at least read what your wife and daughter have heard, all these nice things about you, and then run a test and make sure they recognize who it is that is being spoken about.

Mr. DWYER. I will. Whether they will believe these things is another question. [Laughter.]

Senator LEAHY. About a flowery introduction, only my mother ever really believes it, and my wife tries. But thank you very much, and if you could step down for a few moments, then we will get back to you. Senators, thank you very much.

William Standish of Sewickley, Pennsylvania.

Mr. Standish, welcome, and I know you are here to be introduced by Senator Heinz, and Senator Specter. Senator Heinz, if you would care to start, go ahead.

STATEMENTS OF A PANEL CONSISTING OF HON. JOHN HEINZ AND HON. ARLEN SPECTER, SENATORS IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. Mr. Chairman, thank you very much. I want to thank you for holding these hearings so promptly. It is a special privilege to be here with my colleague, Senator Specter, to introduce to this committee Judge William Standish who is the President's nominee to fill one of three vacancies on the U.S. District Court for the Western District of Pennsylvania.

It is indeed special for me, because I feel like I have known Bill just about all my reasonably adult life, and then some, because he does come from my home town. I remember when I was a teenager, looking up to this great senior "father figure," who was a very impressive role model.

Senator LEAHY. How old are you now, John?

Senator HEINZ. I am now 12. [Laughter.]

I have so many wonderful feelings about this opportunity to introduce Bill to you.

Let me, however, restrain myself to highlighting Bill's qualifications for this job. He has served as a distinguished Judge on the Allegheny County Court of Common Pleas for almost 7 years, since 1980, when he was appointed to that position by the then-Governor of Pennsylvania, Richard L. Thornburgh. He was later elected in 1983 to a full 10-year term on that court.

Prior to his judicial appointment, he had served as an outstanding trial lawyer for some 24 years, from 1956 through 1980, with a

wide variety of experience in civil litigation, particularly in the complex area of commercial and product liability.

I would like to point out, that Bill Standish is here because he was one of several individuals selected by a bipartisan merit selection commission established by Senator Specter, my colleague, and myself, a number of years ago.

That commission actively sought the most qualified candidates for this court, and recommended Bill as being among the very best for appointment to the Federal Judiciary, from among some 50 individuals who initially approached the commission.

I would note that this is not the first time that Bill Standish has been recognized by a bipartisan merit selection commission. He was recommended for appointment to our former Governor by the Trial Court Nominating Committee to fill a vacancy on the Court of Common Pleas.

Bill Standish has also had a variety of legal experience. With his background in commercial law, it was in no way surprising when, in 1975, the American Bar Association appointed him chairman of a research and drafting group on antitrust law. Upon his appointment to the Court of Common Pleas in 1980, he was assigned to the family division in our court system, at the very same time that the divorce laws of Pennsylvania had been radically changed.

This literally placed him at the "cutting edge" of this new law, and, as we know, a trial judge in family-law matters must not only have the sensitivity to deal with emotions involved in domestic disputes, but must also have a vast knowledge of a variety of economic and other matters pertaining to personal and business finances.

I am pleased to say—and you have all the information on his important decisions—that Bill was a standout justice in the Family Division.

I can therefore say, Mr. Chairman, without qualification, that not only does he bring to the Federal bench the breadth of knowledge, legal experience, and judicial temperament that are essential, but notwithstanding, or maybe because of his graduation from Yale University and the University of Virginia Law School, he has earned from the Allegheny County Bar Association the rating of being "exceptionally well-qualified" to serve on the U.S. District Court.

If I could mention one more attribute that Bill Standish possesses, Mr. Chairman, it would be a record stretching back over many years of demonstrated concern for his community and those individuals who are less fortunate.

He has been deeply involved nationally, and locally, with the Leukemia Society of America. He serves as a trustee of the Lockland Children's Center that provides care and training for those with learning disabilities. He continues to be an active board member of the Western Pennsylvania School for the Deaf, and many other similar activities.

As I have intimated, I have personally known both Bill and his wife Peggy for many, many years, and I can attest to his character and his ability to perform the responsibilities for which the President has nominated him, and I do urge the committee to act expeditiously on his confirmation.

The Western District Court does have a growing backlog of cases, and Bill Standish's confirmation by the Senate will be of great assistance in addressing that growing burden.

Mr. Chairman, I thank you, and it is, indeed, a pleasure, once again, to present to the members of this committee, Bill Standish.

Senator LEAHY. Thank you very much, Senator Heinz. As you know, each time this committee has been asked by a Senator from a State to expedite a hearing we have done so. I believe that has included Pennsylvania on more than one occasion. We know of the backlog of cases that you have there and we would expedite, as a matter of Senatorial courtesy in any event, but you also have much reason for asking for it because there is no question that you are faced with a backlog, and we all know, as lawyers, that no matter how many substitute judges you can bring in from other districts, or other circuits, to help out, it is not the same, and it does not provide the continuity that the Federal bench needs.

Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman. I am delighted to join my distinguished colleague, Senator Heinz, in recommending Judge Standish to the committee and to the Senate.

I want to thank you, Mr. Chairman, for indicating your willingness to take Judge Standish out of turn for a very brief hearing because I believe his nomination will not be contested, and in light of that preference, I will waive the many minutes that I would otherwise have taken in speaking about Judge Standish.

Senator LEAHY. Well, we will read, with eagerness, the remarks in the record of course.

Senator SPECTER. Suffice it to say, for this moment, that William Standish is really a model of what a judicial nominee ought to be, with an excellent educational background; with 30 years at the bar; with extensive trial practice in a leading law firm; with experience for 7 years on the State trial bench. He comes preeminently well-qualified, and I will be working with you, Mr. Chairman, on the Judiciary Committee to expedite the processing of this very meritorious nomination. Thank you.

Senator LEAHY. Thank you very much, and, tell me, Mr. Standish, do you have members of your family here?

Judge STANDISH. I do, Senator. My wife, Peggy, is here. My son Eric is here.

Senator LEAHY. Please stand up.

Judge STANDISH. My son Gramm is here, and my daughter, Connie, is here, and my son, Jim, is here. Also my brother and sister-in-law are here, and one of their sons, Peter.

Senator LEAHY. No wonder we have such a crowd here today. Welcome to you all.

Mr. Standish, if you could step down for a moment. We are going to have Mr. Parker introduced, and then we will come back to Mr. Standish for his testimony.

Mr. Parker, please step forward, and I know that you are accompanied by Congressman Joe Skeen.

STATEMENT OF HON. JOE SKEEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. SKEEN. Thank you very much, Mr. Chairman, and thank you for the courtesy that you have shown me this morning. I appreciate it very much, and members of the committee, I appreciate this opportunity.

Senator Domenici and Senator Bingaman, as you have already mentioned, are at a forum in Las Cruces, New Mexico, and, Mr. Chairman, that is my district, and with two stellar performers from the Senate taking care of that assignment it fell to me and it is my honor and privilege to be here this morning to introduce to you Jim Parker, the nominee for the New Mexico Federal District Court, Mr. Jim Parker, and I think it is significant to understand, too, Mr. Chairman, that he is a graduate of the University of Texas Law School. I am a graduate of Texas A&M.

Any time that you can get somebody from A&M to commend and recommend somebody from the University of Texas, you have a very significant endorsement. But I do this wholeheartedly. Jim Parker is a distinguished attorney, a practitioner of the law with great experience and background, and I recommend him to you heartily. It is a distinct pleasure to introduce him to you and this panel, and, with that, I will leave him to your tender mercy.

Senator LEAHY. Thank you, Congressman. I do appreciate your coming over here. I know that it was necessary for Senator Bingaman and Senator Domenici to be out there, and I do know that the two of them appreciate the fact that you have come over here, and I know you have taken a great deal of time to do it, and I thank you for being here.

Mr. SKEEN. Thank you, sir. I would also point out that Jim Parker has a large group of family and numerous friends here with him, and I think that also is indicative of the great support he has. Thank you, sir.

Senator LEAHY. Thank you very much. Maybe you could introduce your family, sir.

Mr. PARKER. Thank you very much, Mr. Chairman. I am very honored to have several members of my family and special friends here today. I would like to introduce my wife, Florence, my son, Roger, my daughter, Pam, my sister, Beverly Weaver, and her daughter, Jonelle, my niece, and my mother-in-law, Mildred Fisher.

If I may, some of my special friends are Nancy Domenici, wife of Senator Pete V. Domenici.

Senator LEAHY. And a special friend of my wife's and mine, too, I might add.

Mr. PARKER. Thank you, sir. Maxine and Leroy Hansen. Mr. Hansen is one of the outstanding members of our bar in New Mexico. Lisa Burke who is the senior law clerk to Judge Howard Bratton who has taken senior status, and I hope that Lisa will be my senior law clerk. Ron Tausend, his son, Jeff Tausend. Mark Beason, and Susan Evans.

Senator LEAHY. Thank you very much. Is there anybody back in New Mexico? [Laughter.]

I might say that for a Friday hearing, I have never seen the room so well filled or with so many very attractive people, and I thank you for bringing them here, sir.

Mr. PARKER. Thank you, sir.

Mr. SKEEN. Thank you, Mr. Chairman.

Senator LEAHY. Thank you, Congressman.

Mr. SKEEN. Mr. Chairman, there is a statement from Senator Domenici which I ask be included in the record by unanimous consent.

Senator LEAHY. Of course. Without objection.

If Mr. Standish could step back up to the table.

Would you raise your right hand. Do you solemnly swear the testimony you will give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge STANDISH. I do.

Senator LEAHY. Please be seated. People note that we only swear the witnesses after the wonderful and fine statements are given first, and after they have a chance to commend each other, for those introducing them. This is merely coincidental. I would not want anybody to read anything particular into it.

TESTIMONY OF HON. WILLIAM L. STANDISH, NOMINATED TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Senator LEAHY. Mr. Standish, did you have an opening statement that you wish to make, or would you like just to go to questions?

Judge STANDISH. Well, all I would like to say, Senator, is that it is a very great honor to me to be here, and I appreciate the opportunity that has been given to me to be considered by your committee. Thank you very much.

Senator LEAHY. Thank you.

Judge, you said that before going on the State court bench, your practice was 100 percent civil law, no criminal law, and you did not handle criminal cases while on the State bench.

The Federal bench of course is getting an increasingly important criminal case load. Do you see that as a problem?

Judge STANDISH. I do not, Senator. In the first place, I am very familiar with the Federal Rules of Evidence which are applicable both in civil and criminal cases, and the Federal Judicial Center provides extensive training to new judicial appointees in criminal matters. They have seminars, one in November, for instance, which will go a whole week. A lot of that is devoted to criminal law.

There are, from time to time, other educational—not only seminars, but materials made available, and I think I can familiarize myself with that, promptly, and I would be able to handle it.

Senator LEAHY. When you are doing that, will you also be looking at the questions of guidelines in the area of sentencing?

Judge STANDISH. I understand that there is legislation pending on that, and of course if Congress adopts guidelines, that would be a part of what I would have to, and would consider.

Senator LEAHY. Now the seat that you are being nominated for became vacant when?

Judge STANDISH. Well, there are three seats vacant, the first of which became vacant in April of 1985 when Judge Mansman was appointed to the Court of Appeals for the Third Circuit, and since then, in May or June of 1985, two district judges became senior judges, so there are three vacancies that have been existing since the summer of 1985.

Senator LEAHY. And your name was sent to the President in January of 1986, is that correct?

Judge STANDISH. That is correct.

Senator LEAHY. Do you know when the President sent your name up here?

Judge STANDISH. I was nominated on July 1, or June 30, either one, of 1987.

Senator LEAHY. Now you have indicated in your financial disclosure report, that you and members of your family have substantial stock holdings, in perhaps as many as a couple hundred significant companies.

Do you see a problem in this as far as having to recuse yourself in cases involving these companies?

Judge STANDISH. I do not, really, Senator, because I do not think that it is likely that, in very many cases, there will be litigation involving the companies in which I have a financial interest. Of course there would not be any in the criminal cases at all, it would only be in civil cases, and it would not interrupt my service to any great extent.

Senator LEAHY. Unless some of them get indicted.

Judge STANDISH. That is true.

Senator LEAHY. The last question I have is: what has been the nature of your pro bono activities, both when you were in practice and while you were on the State bench?

Judge STANDISH. Well, of course, on the State bench, I hear family cases and civil cases, and a great many, particularly in the Family Division, there are a great many cases which arise in which neither party is represented, or only one party is represented, and in those cases we are particularly careful that the unrepresented parties are not taken advantage of in any way at all.

We intend to be as fair as we possibly can be in adjudicating them.

Senator LEAHY. Thank you. I have no further questions.

Senator Specter?

Senator SPECTER. I have no questions. Thank you. I am advised that Senator Thurmond has some questions to be submitted for the record, Mr. Chairman.

Senator LEAHY. Certainly, and the record will be kept open for a reasonable time, if any other Senator does have questions to be submitted for the record, and of course your opening statement will also be a part of the record.

Senator SPECTER. Thank you, Mr. Chairman.

[Response to the questions of Senator Thurmond follow:]

QUESTIONS PROPOUNDED BY THE HONORABLE STROM THURMOND
AND ANSWERS THERETO BY WILLIAM L. STANDISH
NOMINEE FOR APPOINTMENT TO THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

QUESTION NO. 1. Do you feel that a district court judge should assume direct control over complex issues and cases in order to avoid delays and to effectively manage such cases?

ANSWER: A district court judge should assume direct control over complex issues and cases to avoid delays and to manage such cases effectively, except where, in doing so, the court assumes jurisdiction of cases improperly, decides issues not actually in controversy, fashions broad remedies not appropriate to the resolution of the cases involved, or unnecessarily involves the court in ongoing management or oversight responsibilities.

QUESTION NO. 2. Are there ever any circumstances where you would consider it appropriate to decide a case on some basis other than one where the intent of the framers of legislation or constitutional provisions can be detected either through the text of a provision or its surrounding legislative history?

ANSWER: As a district court judge, I would be bound by precedents set by the Supreme Court of United States and the United States Circuit Courts of Appeal, particularly the United States Court of Appeals for the Third Circuit. In deciding a case involving legislation or a provision of the Constitution of the United States, I would be required to follow such a precedent even though it might appear to me that the precedent is inconsistent with the intent of the framers of the legislation or of the constitutional provision.

William L. Standish

Senator LEAHY. Judge, I appreciate your testimony. We hope to have the matter before the full committee as quickly as possible, and I know you have a good friend with Senator Specter on the committee, and I am sure that he will be watching very carefully as the nomination goes along.

Thank you very much.

Judge STANDISH. Thank you, Mr. Chairman. Am I excused?

Senator LEAHY. Yes.

Judge STANDISH. Thank you very much.

Senator LEAHY. That was not very difficult, was it? In fact you are free to leave, and that will probably empty out about half the room, but——

Judge STANDISH. Thank you.

Senator LEAHY. I should note for the record, that we have not introduced Ernest Torres of East Greenwich, Rhode Island because Senator Pell and Senator Chafee have been delayed on another matter, and they did want to make the introduction.

I would ask Mr. Dwyer, at this point, if he would come back to the table and please raise your right hand.

Do you solemnly swear that the testimony you give before this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DWYER. I do.

Senator LEAHY. Please be seated.

TESTIMONY OF WILLIAM L. DWYER, NOMINATED TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

Senator LEAHY. Mr. Dwyer, I must say, in reading through not only the letters that have come from lawyers of high reputation about you, but in the background about you, I can understand very well why Senator Evans and Senator Adams have been so forceful in their advocacy of your appointment. It is an impressive background, and I understand that in addition to your experience as a prosecutor for 4 years—as a former prosecutor, I always feel a certain kinship there—and as a civil trial lawyer for almost 30 years, you have had experience as both a mediator and arbitrator of civil disputes?

Can you tell us how that experience has affected your view of the role of a judge in expediting the resolution of disputes.

Mr. DWYER. Well, Mr. Chairman, and Senators, in what we might call the "good old days," running a court was pretty much just a matter of trying cases. But in the conditions we have now, in the 1980's, there is so much legal business for the courts, and so many courts are so jammed up, that we have to dispose of as many cases as we possibly can by agreement. Otherwise, the calendar delays become intolerable.

I have had the good fortune, while in private practice, to work a great deal on that problem of court congestion, and one of the prime ways of alleviating it is mediation, or arbitration, as the Chairman just mentioned.

I think we are going to have to increase that kind of activity because the courts not only have to decide cases, they have to decide cases timely. One thing I would hope to do, if I have the honor of

being confirmed by the Senate, would be to pay particular attention to that and make as good a contribution as I can to that.

Senator LEAHY. Let me ask you a question similar to a question I have asked a number of people who have come before this committee.

You have had a long and successful career as a lawyer, one that a lot of other lawyers would be happy to have, and at this point in your career you have got a lot of options.

You could continue your practice and continue to make a good living at that. You could spend a lot more free time in your home State, which is one of the most beautiful States in the country. You could support yourself, I suppose, on investment income, if you wanted.

You are opting for a career that is going to have some very, very long hours, certainly a very substantial cut in income, far more restrictions on what you can do as far as outside activity, even if you are given the time to do it.

Why the change?

Mr. DWYER. Mr. Chairman, in 30 years of being a trial lawyer, one thing that has struck me very clearly is that a good trial judge is one of the Lord's blessings to humanity, and, vice-versa, on the rare occasions when we encounter one who is not so good. I admire our system of justice greatly. I feel very fortunate to have worked in it all these years, and I believe if one can become a good trial judge, that is to make as fine a contribution to our society as a person could make.

That is the reason to do it. At the district court level, you can make a great difference for the good, if you do the job well. That is why I would like to undertake it, and do my best.

Senator LEAHY. What kind of pro bono work have you done? Could you give us sort of the flavor of the type of pro bono work you have done?

Mr. DWYER. Yes. I have handled a number of cases over the years for pro bono clients who were unable to pay. I think that is a lawyer's duty, and it is also one of the pleasures of practicing law.

I have also worked a lot in bar associations on programs designed to bring legal help to persons who cannot afford it. Some years ago, I was a co-author—co-originator, I guess would be more accurate—of a program in the Seattle-King County area called Volunteer Legal Services, which provides legal help for persons who cannot afford it.

That is an ongoing program now, and we have other programs in our State, too. Our State bar, like I am sure many others, is very strong on the subject of pro bono.

Senator LEAHY. Thank you. Mr. Dwyer, as you know, a group called Washington Together Against Pornography, WTAP, has written to several members of this committee, saying that you are not fit for judicial office because of advice you rendered to the Seattle Library Board concerning a sex-education book called "Show Me."

Can you tell us what the circumstances of your involvement was in that matter, and what the nature of the advice was that you rendered.

Mr. DWYER. Yes. I would be happy to, Mr. Chairman.

I am embarrassed to have to say this, because I think it should go without saying for all citizens. I am strongly in favor of the vigorous enforcement of the child pornography laws. I believe they have been a strong advance for the legal protection of children.

What happened in this matter regarding the Seattle Public Library is, that as of 1985, the library had had in its collection for, I believe about 10 years, a book called "Show Me."

It was kept on a reference-only basis. It could not be checked out.

In that year, 1985, an anti-pornography group in the State of Washington began making demands on library boards that they remove this book from their collection.

Two regional libraries in other parts of the State were met with this demand first, and both of them decided to retain the book. I had no connection with either of those decisions, and in fact did not even know they were going on at the time.

Then, in 1985, the same demands were made on the Seattle Public Library. The Seattle library board found itself facing conflicting demands. An anti-pornography group was insisting that the book be removed on pain of a possible criminal prosecution.

On the other hand, some civil libertarians were arguing that if the book were removed, it would abridge the first amendment rights of the public.

The board then sought advice from outside counsel on its legal rights and responsibilities in regard to this particular book, and I was retained to help, and the board put to me a single question.

The question was this: If this book is retained in the library's collection, will the library thereby be violating any law? In other words, would the library be committing a crime to keep the book in the collection?

I was not asked whether I liked the book, or whether it should be removed on grounds that it was offensive, or for lack of value, or because of its controversial nature, or anything along those lines.

Those were the broader questions, which would be up to the board and the professional staff. I was asked to answer the single, narrow legal question which I have just mentioned.

We did some careful research and analysis with the help of one of my younger partners, who happens to be a woman lawyer. First of all, neither of us cared for the book, my partner nor I. I must make this distinction clear. I do not endorse this particular book nor do I like it.

But we determined that it was a sex-education book first produced in West Germany in the early 1970's. It was published in that country by a publishing house sponsored by the Lutheran Church. It has a European view of sex and sex education, which is more explicit than many of us in our country are accustomed to, or would like to see become popular.

We also believed that the text of the book, the written part of the book, was serious. We understood that the pictures had been taken, insofar as they involved young people, had been taken with parental consent in West Germany. That the book had been responsibly published there and was published by St. Martin's Press in the United States.

Also, we learned that some teachers and psychologists thought it a very valuable book, but it was controversial, and others heartily disliked it, and some thought it was pornographic.

So the question, to us, was if the matter were tested in a court of law, would a court find that the library was committing a crime by continuing to keep the book.

We determined that the answer was probably no. These things can only be answered in terms of probabilities, but our opinion was probably, if there were a court test, the court would not find the library guilty of a crime in continuing to keep the book.

I would have welcomed a definitive answer in a court of law, and I suggested to the board that it could, if it chose to, bring a declaratory judgment suit against these two groups that were making conflicting demands, sue each of them for a declaration in a court of law. The library, in that kind of case, would remain neutral, and let the others fight it out as to whether the book did or did not belong in the collection.

The board members did not choose to do that because they did not want to initiate litigation involving one of their own books. So their decision was to keep the book in the collection, on a reference-only basis, until and unless a court of law were to rule that it did not belong there.

We expected, at that time, after that decision was announced, that there probably would be court action of some kind so that a definitive answer could be gotten. But no court action came. The anti-pornography groups did not file one, and neither did anybody else, and that appeared to be the end of the matter as far as the Seattle Public Library was concerned.

To the best of my knowledge, there has been no court test yet in the United States of this book under the child pornography statutes. We do know that many libraries have it. Many leading libraries carry it.

We learned this week that the Library of Congress carries this book, "Show Me." The Library of Congress of course is open to the public as well as to Members of Congress.

The presence of this book in libraries, of course, does not mean that the libraries endorse or recommend the book, and the legal advice I gave was given to the best of our ability on an objective basis, and did not imply any endorsement of the book either.

Senator LEAHY. I think that last point is one that should be emphasized.

You were not telling the library that they should, or should not, have this book, if I understand your testimony, but simply rendering an opinion of whether they violated the law, or might be violating the law by keeping it, is that correct?

Mr. DWYER. That is correct.

Senator LEAHY. So they did not ask you whether, in your opinion, they should have the book, or should not have the book, but, rather, in your best legal opinion, without a declaratory judgment of some sort, whether they would be violating the law by keeping it?

Mr. DWYER. That is exactly what happened, Mr. Chairman.

Senator LEAHY. Do you know of other libraries in Washington State that had to check out that same question?

Mr. DWYER. Whether they what?

Senator LEAHY. Whether any other libraries in Washington State were faced with the same question?

Mr. DWYER. Yes. Before the Seattle matter came up, two libraries—and I believe they were the Timberland Regional Library, and the North Kitsap Library—were faced with the same demands, for the same reasons, that the book be removed from their collections.

And before this ever came up in Seattle, both of them had decided to keep the book until and unless a court of law were to determine otherwise.

Senator LEAHY. Did they get the same kind of legal advice that you gave?

Mr. DWYER. Well, I do not know that, firsthand, but I would assume that they did, and I would also assume, again without knowing, that the same question must have come up in some of these other jurisdictions where the book is maintained in public libraries.

Senator LEAHY. We contacted the American Library Association and received back a letter from them which says that St. Martin's, the publisher of the book, was prosecuted and acquitted in Massachusetts, New Hampshire, Oklahoma, and Toronto, Canada. In all four cases, the judges ruled, as a matter of law, that the work was not obscene, and without objection, that letter will be made a part of the record at this point.

[The information of the American Library Association follows:]

OFFICE FOR INTELLECTUAL FREEDOM

AMERICAN LIBRARY ASSOCIATION

50 EAST HURON STREET · CHICAGO ILLINOIS 60611 · (312) 944-6780

September 8, 1987

The Honorable Patrick Leahy
Senate Judiciary Committee
Dirksen Building
Room 212
Washington, D.C. 20510

Dear Senator Leahy:

I am writing in response to the request from the Senate Judiciary Committee for information about the history of SHOW ME! in public libraries. The Office for Intellectual Freedom of the American Library Association serves as the clearinghouse, information and assistance center for the library profession at all levels across the country in matters of challenges and attempted restrictions of library materials. In this capacity, we have a broad, but not necessarily comprehensive, knowledge of challenge incidents, and we are aware of the following concerning SHOW ME!

In 1975 and 1976, St. Martin's, the publisher of this book, was prosecuted--and acquitted--in four locations (Massachusetts, New Hampshire, Oklahoma, and Toronto, Canada) on charges of obscenity. In all four cases, the judges ruled as a matter of law that the work was not obscene.

This title was challenged in 1984 at the Stanislaus County, California library and at the San Jose, California library because the book was said to condone "child molestation or child pornography." In Stanislaus County, the book remained on the shelf, but was later reported "lost" by the borrower--a member of the Turlock Action Committee which had organized to remove the book. In San Jose, the San Jose City Council reaffirmed its support of the Library Bill of Rights and voted to retain the work on open shelves.

SHOW ME! was challenged twice in 1986, on similar charges of "child pornography." In Alameda County, California, the Library Commission refused to remove the book from library shelves, reasserted a library policy allowing children access to all books, and called on the County Board of Supervisors to endorse the ALA Library Bill of Rights. At the Steele Memorial Library in Elmira, New York, the work was challenged because it "promotes masturbation, sex between young people, and incest." To date, the library's board has concurred with the recommendation of the library's professional staff to continue to make the book available to the general public.

I hope this information is of use to the Committee. Thank you for the opportunity to comment. Please let me know if we can be of any further assistance.

Sincerely,

Judith F. Krug

Judith F. Krug
Director

JFK/jj

Senator LEAHY. Now besides your involvement with the Seattle Library Board, and the "Show Me!" matter, have you ever been involved in other issues that might have involved either child pornography or child abuse, and, if so, could you describe them?

Mr. DWYER. The only one that would come within either category, to the best of my recollection, would be the legal project in which we obtained the closure of a teenage nightclub called The Monastery, in 1985.

Of course, we have had bar association projects involving legal protection of children, and a lot of our general work I believe has the effect of protecting children.

Senator LEAHY. Who were you representing in that matter?

Mr. DWYER. In the Monastery matter, I was representing Parents In Arms, which was a group of concerned parents.

Senator LEAHY. One of the witnesses who was unable to be here, Bruce Taylor, of Citizens for Decency through Law asked that we pose a question to you concerning the child pornography laws.

The question is simply this: would you, as a Federal Judge, act to enforce the Federal child pornography laws, or do you have a problem with the constitutionality of those laws?

Mr. DWYER. I believe they are entirely constitutional and very valuable, and I said so at the time of this public library matter in 1985, and if a case of that nature ever came before me as a judge, of course I would apply fully, and faithfully, those laws, as well as all others. But I must say I feel especially strongly on that subject.

Senator LEAHY. Senator Grassley.

Senator GRASSLEY. First of all, Mr. Chairman, I have been asked by Strom Thurmond to raise the point with you—and maybe it was raised before I got here—but at least he asked that I would include in the record at this point this letter that was written to Senator Biden on September the 10th, asking for one more day of hearings on this.

Are you aware of that letter? As we discussed yesterday——

Senator LEAHY. I understand there is one. I have not seen it.

Senator GRASSLEY. And the reason for it is that Senator Thurmond could not be here today, and he has an interest in this. It relates to some personal views that were associating Strom Thurmond with a philosophical point of view, that I think he feels he ought to be in a position to defend himself, as well as some concerns he has about the qualifications of this nominee for district court.

So I would like to include that in the record, if I could.

Senator LEAHY. Of course. Without objection.

[The letter follows:]

JOSEPH R BIDEN Jr DELAWARE CHAIRMAN
EDWARD M KENNEDY MASSACHUSETTS
ROBERT C BYRD WEST VIRGINIA
HOWARD M METZENBAUM OHIO
DENNIS DeCONCINI ARIZONA
PATRICK J LEAHY VERMONT
HOWELL HEFLIN ALABAMA
PAUL SIMON ILLINOIS
STROM THURMOND SOUTH CAROLINA
ORRIN G HATCH UTAH
ALAN K SIMPSON WYOMING
CHARLES E GRASSLEY IOWA
ARLEN SPECTER PENNSYLVANIA
GORDON J HUMPHREY NEW HAMPSHIRE
MARK H GITENSTEIN CHIEF COUNSEL
DIANA HUFFMAN STAFF DIRECTOR
DENNIS W SHEDD MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

September 10, 1987

Senator Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Joe:

As we discussed yesterday, I am requesting that you schedule an additional hearing for William L. Dwyer who has been nominated to be a United States District Judge for the Western District of Washington.

As you know a hearing on his nomination is scheduled for Friday, September 11, 1987. I have been informed that certain individuals who wish to testify on his nomination will not be able to attend the hearing on that day. Moreover, I will be unable to attend the hearing myself due to a commitment in South Carolina.

Accordingly, I request that you schedule another hearing for Mr. Dwyer, as soon as committee business will allow.

With kindest regards and best wishes,

Sincerely,

Strom

Strom Thurmond

ST:jtf

Senator GRASSLEY. For my part, Mr. Dwyer, I would like to—I suppose it is this simple. How do you personally view the book, "Show Me." Do you view it as obscene, or don't you?

I mean your personal view.

Mr. DWYER. My personal view?

Senator GRASSLEY. Yes. Not your advice to the——

Mr. DWYER. Not my legal view?

Senator GRASSLEY. Not your advice to the library, or anything. How do you view it? I think that this gives us an indication of what your judgment is on cases like this in the future.

Mr. DWYER. I do not care for the book, personally, I must say. I dislike the book, and I dislike its approach to sex education.

The advice I gave was my prediction as to what would probably happen if the matter were tested in court, and that prediction of course was just an objective piece of legal advice.

Senator GRASSLEY. So you personally view the book as obscene?

Mr. DWYER. Well, "obscene" is a legal term, and it has a certain——

Senator GRASSLEY. Well, "obscene" in the way the Supreme Court made that determination in the *Ferber* case.

Mr. DWYER. You mean violative of the child pornography statutes?

Senator GRASSLEY. Yes.

Mr. DWYER. Well, as I say, my best judgment was that it would probably be held not a violation of the child pornography statutes for the library to keep that book.

I believe other libraries around the country must have the same opinion because it is quite widely held in collections, including, as I say, in the Library of Congress.

Senator GRASSLEY. The publisher of the book, St. Martin's Press, Incorporated, in a letter that we had received when we were considering changing child pornography statutes—and I was very much involved with that, 2 or 3 years ago I believe it was—they decided that they were not going to publish it anymore based upon the child pornography statutes, and they are not publishing it now. That is a direct result of the *Ferber* case.

Mr. DWYER. The *Ferber* case is one I heartily agree with, and besides, of course, being bound by it, I happen to agree with its point of view entirely.

The statement of the publisher, though, could not be at all decisive on what would happen if there were a court test under the final version of that statute as it was passed.

I think, as far as a book being held in a public library were concerned, it would be unlikely that a court would hold the library in violation of the law for keeping the book, particularly on a reference-only basis.

As I told the Chairman, Senator Grassley, I would have welcomed a court test of this proposition. I do not know why these anti-pornography groups, who of course have a total right to say whatever they want to on this subject, or any other subject—I do not understand why, if they feel strongly that this book, as retained in a library, violates some law, why has no court test ever been sought. To the best of my knowledge, at least, none has been sought, none ever came to our attention.

If there were such a case, I, for one, would welcome it. As you know, all a lawyer can do is give the best professional advice he can give, based on the law as it exists. That is what I did in this instance.

We can only deal in probabilities in most cases. In this particular case, I think a court answer would have been a very healthful thing. I did what I could to promote that. It has not happened yet.

Senator GRASSLEY. Well, of course, I think that that advice that you gave, regardless of how sincere and right you thought that advice was, is exactly the advice that raises the question to some of us on this committee, as to whether or not that sort of judgment is the sort of judgment we want a judge to have as a basis for future decisions that he might make, as we make a determination here on the security of a life-time appointment.

And so I do not know whether your answers to these questions are going to be satisfactory or not at this point, but I think all the issues that could have been raised by this side of the aisle, as well as the questions that Mr. Leahy asked you, are all that can be asked at this point, and we will have to review the record and make a determination based on that.

But I guess I would conclude, Mr. Chairman, by hoping that you or Senator Biden, in his capacity as chairman of the full committee, might take and give serious consideration to Strom Thurmond's pursuit of this in a further committee meeting, and that is all I can do at this point, Mr. Chairman.

Senator LEAHY. Well, I understand Senator Thurmond met with Mr. Dwyer yesterday, and certainly, if he were to request a further hearing then it would be made available to him.

Would he be available this evening when we go back into these matters at all?

Senator GRASSLEY. I cannot answer that.

Senator LEAHY. Senator Thurmond apparently is down meeting with the Pope at the moment and straightening him out, and that is probably about as much as we should ask any senior member of this committee to do in any one day, and I wish him well.

I am sure if he wants a further hearing, we can have it. I would note, and I will put it in the record, an exchange of letters between Senator Humphrey to the chairman of the committee, and a response from me. There was a request for a delay, initially, in this hearing, and I was concerned only because as I stated earlier in this hearing, every single Senator who has ever asked me to expedite a hearing, for whatever reason, in their State, I have done so, on numerous occasions throughout this year.

I should note that in every single one of those instances, the Senator requesting it has been a member of the other party, and in every single instance, there has not been any objection.

In this instance, the request for proceeding quickly was made by both a Republican and a Democratic Senator, and I hope it is only coincidental, that there was, for the first time, a request to delay that and not move forward with an expedited hearing.

I have tried very much to take care of the concerns of the Senators. As I said, in every instance, the request for an expedited hearing has come from a member of the Republican Party, and in every

single instance I have agreed with it, and in every single instance, there has been no objection from either Republicans or Democrats.

I do hope that this is merely coincidental, that in this instance there was an objection from the other side. I would note, also, that we had planned to hear from several witnesses who had requested an opportunity to testify against Mr. Dwyer's nomination.

We were informed yesterday that all these witnesses would not appear, for a number of reasons that are not entirely clear.

Andrea Vangor of Washington Together Against Pornography indicated that she did not have sufficient time to prepare for the hearing, although she stated that she knew the hearing date as much as 4 weeks ago, and was the first person to request to testify.

Bruce Taylor of the Citizens for Decency through Law also indicated that he would not be able to come. He said that his group was not taking a position on this nomination, and they have previously submitted to committee members a detailed statement raising their concerns.

Jim Chandler of the Adam Walsh Child Resource Center indicated his organization ultimately decided it did not want to take a position on the nomination. All of these witnesses had been invited to submit written statements in order to make the record here complete.

I know that there are other witnesses who wish to testify, and we will have them testify although I am going to break for a moment to allow Senator Pell to introduce Mr. Torres who is here, unless Mr. Dwyer, you have something further you care to say at this point?

Mr. DWYER. Well, the only thing I would add, Mr. Chairman, is that I feel greatly honored to have been nominated by the President and to have the support of both Senator Evans and Senator Adams, as well as former Senator Slade Gorton, and, if confirmed, I will do my best to live up to their expectations.

Senator LEAHY. Mr. Dwyer, I meant to have mentioned former Senator Gorton, too, who also was, and is, a very strong supporter of yours. And I should also commend you for your answers. None of us like pornography. There are a lot of things that a lot of us do not like, but, as lawyers, we are also sworn to uphold the law, and that means applying the law as the law is, and not whatever our own personal feelings might be.

The way you applied the law in this case, as I noted from the letters going in the record, is the same way judges in four other jurisdictions applied the law, as a matter of law. There are a lot of things that we may want to do, whether as lawyers, private citizens, judges, litigants, but this is a country with a rule of law, and we follow it.

I think that is what you have done, and I commend you for it.

Mr. DWYER. Thank you very much, Mr. Chairman.

Senator LEAHY. Senator Pell, could you bring Mr. Torres up here, please.

STATEMENTS OF A PANEL CONSISTING OF HON. CLAIBORNE PELL AND HON. JOHN H. CHAFEE, SENATORS IN CONGRESS FROM THE STATE OF RHODE ISLAND

Senator PELL. Thank you very much, Mr. Chairman for your courtesy and kindness, in permitting me, in maybe a little bit of an irregular order, to have this opportunity to introduce before you a first-rate judicial nominee from Rhode Island.

Ernest Torres has an outstanding record as a lawyer with a proven record as a jurist in our State court system. In addition, Mr. Torres has served in the Rhode Island General Assembly, won praise from both sides of the aisle, both parties, for his leadership and for his legislative advocacy.

As a State Superior Court Judge he was respected for his fairness as well as for the craftsmanlike manner in which he rendered his decisions.

I know that Mr. Torres will be a valuable, needed addition to a very much overworked Federal District Court in Providence.

He has friends, and supporters from both sides of the aisle, and has the respect of just about everybody with whom he has worked.

So I am delighted to be here supporting his candidacy, and I know that I speak for, with Senator Chafee in this matter. I understand he has not yet——

Senator LEAHY. We also have the other distinguished Senator from Rhode Island. Rhode Island would send only distinguished Senators, Judge Torres, you should understand.

Senator PELL. I just completed my statement.

Senator LEAHY. Senator Chafee.

Senator CHAFEE. Well, thank you very much, Mr. Chairman, and I want to thank my distinguished colleague for the kind comments that he relayed on behalf of Judge Torres.

I have known Judge Torres for a good number of years, and I appreciate this opportunity to say a few words in his behalf. He is an old and valuable friend, whose experience and qualifications I think make him an ideal candidate.

He was born in New Bedford. I do not know exactly what Senator Pell said, so I might be reviewing a little bit. To my knowledge, he would be the first Federal Judge of Portuguese ancestry to serve in the First Judicial District, which I think is a signal honor for thousands of citizens of Portuguese ancestry in Rhode Island and throughout New England.

He graduated from New Bedford High School, his father is a retired firefighter, and both his parents still live in New Bedford.

He attended Dartmouth College on a scholarship, majoring in government and chemistry and graduated in 1963, and then spent 2 years coaching football and baseball at schools in Connecticut. Then he went to Duke, attended law school there, and graduated in 1968, worked for one of our major firms in Providence, and then opened his own law office in one of our outlying towns.

He was elected to the town council, and served as president of that, and then a former Democratic Governor, J. Joseph Garrahy. Governor Garrahy appointed him to the Rhode Island Superior Court where he served with great distinction, and then left to take a position in Connecticut, and then came back to our State.

So, I just think we have got a top-notch candidate here, Mr. Chairman, and I do urge you and the full committee to give him every consideration, and I hope he will receive your mark of approval. Thank you.

Senator LEAHY. Thank you very much, and I know that you have made a special trip to be here for this, Senator Chafee, and I appreciate that. As explained just before you came in, because of some time constraints we have on the committee, we wanted to make sure that Judge Torres got introduced before we broke off here.

And I might say, Judge, that the two gentlemen with you are also held in very high regard by the Senate, and they have been strong advocates of yours, and that stands you in very, very good stead.

I also know they are very busy men, and I do not want to hold them here. You cannot leave, but they are free to leave. Senator Pell and Senator Chafee, I thank you very much for being here.

Senator CHAFEE. Well, thank you very much, Mr. Chairman.

Senator PELL. Thank you for your kindness and courtesy.

Senator LEAHY. We will take a 2-minute recess.

[Short recess.]

Senator LEAHY. Judge Torres, could you raise your right hand, please. Do you solemnly swear the testimony you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TORRES. I do.

Senator LEAHY. And do you have members of your family here?

Mr. TORRES. Yes, I do, Mr. Chairman. My wife, Jan. I am very pleased to introduce my wife, Jan, to the committee. We have three children who are here in spirit, but unfortunately they are in school right now.

Senator LEAHY. Yes, I know.

Mr. TORRES. And they are very actively involved in sports, and other things, that prevented them from being here. I have a son, Ernie, a son, Russell, and a daughter, Laura. I would have invited more friends here, but Jim Parker and Bill Standish's families took up the whole room so there was not any room.

Senator LEAHY. We would have had to use the caucus room. [Laughter.]

Our youngest is starting his senior year in high school this week, and I am hoping we will get out of here so I can get back home and at least be able to spend some time with him this weekend.

TESTIMONY OF HON. ERNEST C. TORRES, NOMINATED TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF RHODE ISLAND

Senator LEAHY. Judge, you were on the court in Rhode Island with a life-time tenure, and left that court after a relatively short time.

Why did you do that?

Mr. TORRES. Mainly financial reasons, Mr. Chairman. As I mentioned, I have three children, one of whom is now in college, and the other two are approaching college age, and I became very concerned about my ability to provide for their education. Of course

the salary that I was making as a State Superior Court Judge is substantially less than what a Federal Judge is paid.

I do not aspire to be a wealthy person, but simply to provide for the needs of my family, and the differential is slightly more than enough to pay for a year's education each year, so——

Senator LEAHY. Well, the basic reason for my question is that you are 45, and will be one of the younger members of the Federal Bench, and with a long tenure ahead of you.

Do you see being faced with the same kind of decision you were faced with on the Rhode Island bench?

Mr. TORRES. I do not see that, Mr. Chairman. I have given that a lot of very hard thought. My wife and I have discussed this at some length, and I certainly cannot anticipate that situation recurring, or otherwise, I would not be here this morning.

Senator LEAHY. Thank you. I have no further questions, and the record will stay open, of course, long enough for other members to submit questions for the record. Thank you very much.

Mr. TORRES. Thank you, Mr. Chairman.

Senator LEAHY. This has been a truncated way of doing things, and partly to accommodate the time of other Senators. Mr. Dwyer, you have two witnesses who are here and want to testify on your behalf. Meade Emory, who is Vice Chairman of the Seattle Public Library Board, Seattle, Washington, and David Crosby, Founding Member, Parents-In-Arms, Seattle, Washington.

I wonder if Mr. Emory and Mr. Crosby are here. Would you please step forward, gentlemen, and, which one is which?

Mr. EMORY. Meade Emory, Mr. Chairman.

Senator LEAHY. Mr. Emory, and Mr. Crosby, would you both raise your right hands. Do you solemnly swear the testimony you will give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. EMORY. I do.

Mr. CROSBY. I do.

TESTIMONY OF A PANEL CONSISTING OF MEADE EMORY, VICE CHAIRMAN, SEATTLE PUBLIC LIBRARY BOARD, AND DAVID CROSBY, FOUNDING MEMBER, PARENTS-IN-ARMS, SEATTLE, WA

Senator LEAHY. Mr. Emory, did you have a statement you wish to make?

Mr. EMORY. I have a brief statement, Senator, and I also have prepared a written statement which I provided for the staff, and I would ask unanimous consent that it may be made a part of the record.

Senator LEAHY. Without objection, it will be.

Mr. EMORY. I will briefly summarize my statement, Senator.

I am a practicing lawyer in Seattle, and, more importantly, here, I am a member of the Board of Trustees of the Seattle Public Library.

I think it is important for the committee to understand precisely what the controversy was regarding the book, "Show Me!", and just what Mr. Dwyer's role was in it.

In early 1985, the library received complaints about the book. These complaints, as is standard practice, were referred to an internal committee of the library staff. It is not the board's practice to determine whether a particular book should be retained, Senator.

The staff committee found the book to be consistent with library acquisition practices. It found that it offered an alternative approach for those parents comfortable with nudity, and who wanted to teach their children about sex.

However, some in the King County Prosecutor's Office did have some doubts about the legality of the book, and this compelled the board, so that it could be on sound ground with respect to all aspects of its collection, to seek legal advice with respect to the appropriateness of that book as part of our collection.

We contacted Doug Jewett, the Seattle city attorney, to ask his advice about what we should do. He analyzed and studied the issue, and recommended that he appoint a special city attorney, assistant city attorney, to assist the board with this particular issue.

William Dwyer, because of his outstanding reputation in the Seattle legal community was, Senator, selected for that job.

Now as Mr. Dwyer himself said—and I can reiterate—a single issue was the board's charge to Mr. Dwyer, and that was as follows:

If the issue were tested in court, would the retention of "Show Me!" by the Seattle Public Library be found to be in violation of any State or Federal statute?

We did not ask him whether it was a good book, whether we should retain it, or whether it was appropriate with respect to the overall view of the Seattle Public Library. His job was that single legal issue.

With the assistance of Bill Dwyer, and Doug Jewett, who was in on all of the sessions that we had with Mr. Dwyer—and by the way, both Mr. Jewett, Seattle city attorney who is an elected official, and Mr. Dwyer, gave the Seattle Public Library Board the same advice.

With their assistance, the board concluded that the book should be retained as a part of the library's collection, and, by the way, Senator, that was a decision which was unanimously reached by all five members of the Seattle Public Library Board in a public hearing.

The board felt, with the assistance of our attorneys, that it was doubtful that any of the photographs in the book would come within any of the prohibited categories in the applicable statutes, and we felt that the book was textually, as distinct from the pictures, a serious and educational book.

And we concluded, after receiving the advice from both Mr. Jewett and Mr. Dwyer, that the board would probably not be held by a court to be in violation of any State or Federal law if it retained the book.

And in reaching that decision, we were mindful of the fact that the book had been, and would continue to be retained on a reserve-only basis in the library's collection.

I think that the apparent correctness of the board's decision in this regard is confirmed by the fact that 2½ years after the fact no action has been commenced, as far as I know, against any library

in Washington State, or, indeed, of course, against the Seattle Public Library, regarding this book.

And I think it is also noteworthy that the book is retained in the collection of a number of major public libraries throughout this country.

I will just mention a few. The San Francisco Public Library, the LA Public Library, the Dallas Public Library, the Minneapolis Public Library, Chicago, Boston, San Diego, and New York, just to name a few.

A closing comment. I think it should also be noted that soon after this controversy quieted down, Mr. Maleng, who is the King County prosecuting attorney, said publicly that he agreed with the Seattle Public Library Board's decision.

During his relationship with the board on this issue, Bill Dwyer expressed extreme sensitivity to children's issues, and reiterated his support many, many times, of child pornography statutes.

Everything he did in this matter was done with skill, tact, and great professionalism. This, Senator, and so many other things that Bill Dwyer has done in our community, strongly commend confirmation of his nomination to the U.S. district court.

Now I have one other thing I would like to add for the record. Shortly after the board reached its decision, Ron Dubberly, who was the city librarian of the City of Seattle at that time, made an announcement to the staff dated May 3, 1985, indicating why the Board reached its decision and all of the circumstances leading up to the board's decision, and I think it would be relevant for the committee's deliberations, and I would ask that that be made a part of the record.

Senator LEAHY. Without objection, it will be a part of the record.

Mr. EMORY. Thank you, Senator.

Senator LEAHY. Thank you very much, Mr. Emory.

[The information and statement of Mr. Emory follow:]

95-823 O - 89 - 14

Seattle Public Library
1000 Fourth Avenue Seattle, WA 98104 206-625-2665

Ronald A. Dubberly
City Librarian

May 3, 1985

MEMORANDUM

TO: All Staff

FROM: Ronald A. Dubberly

RE: The Retention of Show Me in the Library's Collection

Today, the Library Board decided that Show Me! should be retained in the Library's collection. The path which led to this action is reviewed in this memorandum, along with my opinions on the subject.

On January 28, 1985 the Library received a letter of complaint about the book Show Me! by Will McBride (St. Martin's Press, 1975). The Library requested the letter's writers to submit a formal complaint. No formal complaint has yet been filed with the Library. However, the King County Prosecutor did contact the Library. Later the Prosecutor's staff, in discussion, strongly implied a threat of prosecution if the title were not to be removed from the Library collection. The recent situation was the direct result of that implied threat by the Prosecutor's Office.

The Library began two types of review of the book. The first, and standard, review was the staff's reconsideration of the book as part of the collection. Using the Library's Materials Selection Policy as the guide. At the same time I began to compare the book and its purpose in the Library to the relatively new State and Federal statutes regarding sexual exploitation of children.

The considered staff conclusion, which I supported, was that Show Me! continues to meet the Library's Materials Selection Policy and is appropriate for the Seattle Public Library collection which serves the citizens of Seattle. The book

offers an alternative approach for those parents who are comfortable with nudity and who want to teach their children about the subject of sex. The book contains explicit photographs of nude children. (Contrary to some allegations the book does not contain photographs of young children participating in sex with adults.) The staff found that, historically, Show Me! is reflective of social and alternative educational attitudes of the late 1960's. It also is a significant work because of earlier legal decisions regarding its nature.

My review of the legal aspects of the issue included discussions with the City Attorney's Office, consultation with other Washington library administrators about the opinions of their legal counsels and consideration of comments from the King County Prosecutor's Office. These early efforts revealed conflicting opinions about the application of the new State statute in this situation and in some quarters, a reluctance to treat the legal issues directly. The Library Board, at my request became directly involved in this situation. It became apparent that the assistance of expert legal counsel would be necessary before the Library could take a responsible and effective legal position regarding the relationship of Show Me! to recently enacted statutes. At the request of the Board, the City Attorney appointed special counsel for the Library in this matter.

The Library continued its attempts to learn the legal position of the King County Prosecutor's Office. The Board agreed to meet with the Prosecutor's representative to obtain such an opinion. The Library refrained from taking a position on the legality of the book until hearing from the Prosecutor's Office on the matter. Subsequently, we learned that the Prosecutor's Office in the planned meeting would comment only on the "appropriateness" of the book.

Courtesy dictated that the Prosecutor's opinions be accepted. Fairness dictated that lay citizen's opinions also be accepted on the same basis as the Prosecutor's non-legal comments. Approximately 300 written comments were received. A great many of the statements appeared to be from individuals who reside outside of Seattle, who have not seen the book and whose comments were based largely on a television news story about the controversy. Some writers mistook the Board's request for comments as a public vote on the retention or removal of Show Me!.

The Library's review of the legal issues related to Show Me! found that the book has been judged in three courts of law to be not obscene. Despite earlier oral implications by the

County Prosecutor's staff, his office in written correspondence, has stated only that Show Me! is within the purview of the language of this state's law against the sexual exploitation of children and has not stated that the retention of Show Me! by the Seattle Public Library would be a violation of State child sexual exploitation statutes. Furthermore, our legal counsel has found there not to be sufficient legal basis for the removal of Show Me! from the Library's collection.

My considered professional opinion on this question, given to the Board today, included extensive examination of the book, study of the statutes, continuing consultation with legal counsel, review of the U.S. Supreme Court's "Ferber" decision, the reading of several hundred citizen letters about the topic, an educated concern for the welfare of children, the educational and informational needs and interests of Seattle, and lengthy contemplation about this matter. Given that our legal counsel has indicated tht there is not sufficient legal basis for removing the book and given that I find the book to be within the Library's Materials selection policy, I recommended that the Board vote to retain Show Me! in the collection. Show Me! legally can and should remain in the Library's collection.

Regarding an important social issue imbedded in this matter, I do not find too burdensome the photographic aspects of the book, involving nude children, given the educational purposes of the book's authors, the nature of its original publisher - a Lutheran Church-sponsored publishing company, and the educational use of the book intended by the Library in its original purchase of the work a decade ago. I find legitimate and not sexually exploitive the photographs of the nude children in Show Me!, photographs taken with parental consent for the purpose of producing an educational "textbook" which needed actual photographs to convey the authors' perspective about parent/child comfortableness with human sexuality and nudity. The fact that the book's photographic nature has been an asset in therapeutic and educational situations attests to the legitimacy and value of the photographs in this particular work and its educational context. Show Me! legally can and should remain in the Library's collection.

Disagreement by some in the City of Seattle about the authors' perspective on sex education is not a factor for the Library in this issue. One of the Library's functions is to own items which represent differing perspectives. The Library has a variety of books which offer other perspectives on sexuality and sex education. It is the

citizen's right to choose from among any or none of the spectrum of titles owned by the Library on this, or any other, subject. It is the Library's responsibility to offer to the citizens of Seattle a wide set of idea and opinion choices for their consideration, adoption or rejection.

A legitimate exercise of that responsibility by the Seattle Public Library is the continued retention of Show Me! in the Library collection, where it has been for about a decade and has been available only for in-library use for the past several years. The retention of Show Me! does not violate the Library's traditional concern for the well-being and education of children and the prevention of their abuse. Although many might not agree with its alternative approach to sex education for children by parents, Show Me! supports a nurturing parental relationship and warns against the dangers of child abuse. The retention of Show Me!, an educational work on the subject of sex, does not prevent the Library from continuing to be sensitive to the issue of the sexual exploitation of children as we select materials for inclusion in the Library's collection. The Library can continue to have this legitimate sex education book in its collection, continue to make available a strong collection of materials especially well-suited for children, continue to urge parents to exercise their right and responsibility to supervise their children's reading and use of the Library, and continue to be a strong advocate against the abuse of children.

RAD:sk

cc: Library Board✓
William Dwyer
Douglas Jewett

STATEMENT IN SUPPORT OF THE NOMINATION
OF WILLIAM L. DWYER TO THE UNITED STATES DISTRICT COURT

Committee on the Judiciary,
United States Senate, September 11, 1987

My name is Meade Emory. I am a practicing lawyer in Seattle and, relevant here, a member of the five member Board of Trustees of the Seattle Public Library (having been a member for six years).

I am honored to have the opportunity to submit my statement in support of the nomination of William L. Dwyer to the United States District Court and to provide the Committee with some important background with respect to Mr. Dwyer's service to the Board of the Seattle Public Library in reaching its decision on whether or not to retain the book Show Me! in the Library's collection.

On January 28, 1985, the Library received a letter of complaint about the book Show Me! by William McBride (St. Martin's Press, 1975). Although the Board requested the authors of the letter to submit a formal complaint, none was submitted. Subsequently, however, the library was contacted by the King County Prosecutor, Norm Maleng, with respect to the book. Later, the prosecutor's staff, in discussions with the Library's administration, expressed the opinion that the book should possibly be removed from the Library's collection.

The Library began, of course, an internal review of the book. This involved the staff's reconsideration of the book as part of the collection. Using the library's Materials Selection Policy as the guide, the staff concluded that the book continued to meet its Policy and that it was appropriate for the Seattle Public Library which serves the citizens of Seattle. They concluded that the book offered an alternative approach for those parents who are comfortable with nudity and

who want to teach their children about the subject of sex. The staff concluded that, historically, the book is reflective of social and alternative educational attitudes of the late 1960s.

Doubt about the legality of the book as part of the Library's collection, however, compelled the City Librarian to involve the Library Board directly in this situation (even though it is not the regular responsibility of the Board to pass upon individual items in the collection). Early discussions with representatives of the King County Prosecutor's Office revealed conflicting opinions upon the application of relevant statutes to this situation. The Board could not get a direct reading from the King County Prosecutor's Office as to whether continued possession of the book by the library was improper.

This situation made it clear that it was necessary for the Board to obtain legal counsel on this issue so that it could adopt a responsible and sound legal position regarding the relationship of Show Me! to recently enacted relevant statutes. Accordingly, at the request of the Board, the City Attorney Doug Jewett, appointed William L. Dwyer as Special Counsel for the Library Board in this matter.

Mr. Dwyer was recommended to the Board, and to the City Attorney, for this position because of his strong reputation as a lawyer in this community, and one who was steeped in Constitutional principles and statutory analysis--the kind of skills that would be involved in assisting the Board. The Board gave Bill Dwyer a limited charge, i.e., if the issue was tested in court, would the retention of Show Me! by the Seattle Public Library be found to be in contravention of any state or federal statute. The Board did not ask Mr. Dwyer whether or not the book was a tasteful book for the Seattle Public Library, how it meshed with the rest of the collection, or whether the book was generally appropriate for the Library's collection. The assignment to Bill Dwyer was the single legal issue set forth above.

After thorough analysis, and with the assistance of City

Attorney Doug Jewett and Bill Dwyer, the Board concluded that retention of the book would not constitute a violation of any statute. The same counsel given to the Board by Bill Dwyer was also given to the Board by Doug Jewett, Seattle City Attorney.

Show Me! is a sex education book produced in Germany in the early 1970's by a Lutheran church-sponsored publishing company. It was published in this country by St. Martin's Press in 1975 and is kept in many public libraries. The book depicts nudity and sexuality for the legitimate purpose of education. The photographs were taken in Germany in a professional studio with parental consent. Many educators and psychologists have found the book to be useful and valuable in their work. However, the book is controversial and some maintain that it should be suppressed.

The Board concluded that the text of the book is serious and educational and clearly not within the scope of any law prohibiting expression. It also believed that it is doubtful that any of the photographs in the book would be found to be within the categories prohibited by the state or federal child pornography statutes. For these reasons, and because of the circumstances and purpose of the book's production and its status as a reference-only work in the Library, the Board concluded that the Library probably would not be held by a court to be in violation of any law by keeping the book.

Even prior to the Board's decision with respect to Show Me! the book has not been a part of its circulating collection. It is available only on reserve and must be used within the Library. This is still our policy.

Several other aspects of the Board's process, insofar as it involved Mr. Dwyer, are relevant. First, Mr. Dwyer suggested to the Board that it could, in an effort to resolve this issue, commence declaratory judgment proceedings (in state and federal courts) to determine whether it was legal to retain Show Me! The Board did not chose this course, however, because it felt it would constitute a bad precedent to initiate litigation with respect to particular books in its collection.

Second, during his relationship with the Board, and his several discussions with it, Bill Dwyer consistently expressed his support of, and belief in, child pornography statutes. His sole assignment, in supplying assistance to the Board, was to advise the Board whether or not the book, if retained, would constitute a violation of any statute.

Third, the Board's decision was to retain Show Me! until, and unless, a court of law ruled that it did not belong in the Library's collection. The apparent correctness of the Board's decision is confirmed by the fact that no legal actions, of any kind, have been commenced regarding Show Me! In fact, Prosecutor Maleng has stated, publicly, since the Board's decision, that he felt that the Seattle Public Library Board acted correctly in retaining the book.

Fourth, at or about the same time that the Seattle Public Library Board received complaints regarding Show Me!, other regional libraries in the State of Washington received the same kind of complaint. The Kitsap County Regional Library Board decided in February, 1985, to retain the book in its collection and the Timberland Regional Library, in Olympia, Washington, reached the same decision in March, 1985. Similarly, a random sampling of major urban libraries shows that the title Show Me! is presently in the collection of the San Francisco Public Library, Los Angeles Public Library, Dallas Public Library, Minneapolis Public Library, Chicago Public Library, Boston Public Library, San Diego Public Library and the New York Public Library, among others.

The issue which the Board faced was not one of whether it "liked" the book. Libraries as institutions should, and the Seattle Public Library Board does, abhor censorship. We are fortunate to live in a diverse and open society where different views exist with respect to a broad range of issues. We recognize that the book Show Me! is a somewhat controversal book and that some maintain it should be suppressed. This cannot, of course, by itself be a reason for responding to this kind of criticism. The Board did not "endorse" this book, nor

did Bill Dwyer in rendering the Board legal advice. All the Board decided was that, in the Board's best judgment, neither state or federal statutes required the removal of Show Me! In view of the fact that there has been no court anywhere that has held, nearly 2-1/2 years after the Seattle Board made its decision, that the retention of Show Me! in a public library is illegal, it appears that our 1985 decision to that effect was correct.

It was because of Mr. Dwyer's reputation as an outstanding lawyer, and as one who possessed sensitivity both for children's issues and library-related concerns, that the Board turned to him for legal assistance. In that process, he displayed great sensitivity and understanding of the interests of all parties. His advice was unanimously adopted by the Board, which included Dr. Charles Odegaard, former president of the University of Washington, at a public hearing on May 3, 1985. Everything that Bill Dwyer did on this issue, and the manner in which he did it, commends, in the strongest possible terms, confirmation of his nomination to the United States District Court.

Senator LEAHY. Mr. Crosby.

Mr. CROSBY. Thank you, Mr. Chairman. My name is David Crosby and I currently reside in Juneau, Alaska. From 1976 until 1985, however, I resided in Seattle, Washington, where most of the events that I am going to relate to you took place.

I have two children who mean all the world to me. I have learned in recent years, however, that just loving our children is not enough. Our children are at the focus of a legal and political debate in which we are all vitally concerned.

I am presently an elected member of the Juneau, Alaska Board of Education. I am also the co-chairman of the Mayor of Juneau's Blue-Ribbon Commission on Youth.

About 2½ years ago, with the assistance of Bill Dwyer, I formed a group called Parents-In-Arms. As the name suggests, we were angry. We were angry at the exploitation of our children in the City of Seattle. That group succeeded beyond our wildest expectations, in large part because of the instrument role played by Bill Dwyer.

I do not know if any of you have ever seen the movie documentary, "Street Wise;" it was nominated for an academy award in 1986. It was done by Cheryl McCall, a Time-Life photographer.

It depicts the lives of children living on the streets of Seattle. The only adults that you will see are pimps and prostitutes and pushers, and johns, who prey upon these 10-, 11-, and 12-year-old children. These children were literally living by selling their bodies to adults for money and by selling drugs to support their own drug usage.

At that time, as a result of a lawsuit in which the ACLU participated, the City of Seattle had no curfew. Ironically, we threw the adults out of the bars at 2:00 a.m. in the morning, but the teenage establishments had no such restrictions. They stayed open all night long. And it was not at all uncommon, at that time, to find children, young children, pre-teenagers, mixing at early hours in the morning with adults, many of whom had come from the bars that had been closed at 2:00 a.m.

The recurring image throughout the movie "Street Wise" is an old building called the Monastery. It was at one time a church in what is now a sea of parking lots in the Denny Regrade area of Seattle. The Monastery was run by a man named George Freeman, who was a two-time convicted felon in New York and New Jersey. He moved west, was run out of Spokane in connection with a morals charge involving a young man, finally settling in Seattle, which he found much more tolerant and to his liking.

He rented the old church and obtained a license as a Universal Life Minister. You may recall, the Universal Life Church is a mail-order church founded in the 1960's as a method of avoiding the draft. It essentially has no religious precepts.

The sign over the door at the Monastery read, "A Congregation of the Universal Life Church." That was the cover that was used in an effort to avoid the laws regulating the dispensing of liquor, and many other statutes and ordinances.

Senator LEAHY. In fact I found that letter on that, that you sent me, to be one of the most powerful ones I received on this committee, and I intend to make sure every member of the committee sees it at the time they vote on Mr. Dwyer's nomination.

Mr. CROSBY. I would hope that that letter would become a part of the record.

Senator LEAHY. It will be made a part of the record, and I know that it must have been a difficult letter for you to write, personally.

[The information of Mr. Crosby follows:]

LAW OFFICE OF
COUNCIL & CROSBY
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

WILLIAM T. COUNCIL
DAVID C. CROSBY

(907) 586-1786

September 3, 1987

The Honorable Patrick Leahy
The United States Senate
Washington, D. C. 20510

Re: Appointment of William Dwyer
(Western District of Washington)

Dear Senator Leahy:

I am writing to you as Chairman of the Judicial Task Force of the Senate Judiciary Committee, which must pass upon William Dwyer's nomination to be a United States District Court Judge for the Western District of Washington.

I do not intend to spend a great deal of time extolling Bill's professional qualifications for the appointment. As a former trial lawyer practicing in the City of Seattle, I assure you that it is quite literally impossible for me to think of another lawyer in the Western District better suited by training, experience, and temperament to sit on the federal bench.

Given the unanimity of opinion with respect to Mr. Dwyer's credentials, I would hardly think this letter necessary but for reports that Mr. Dwyer's nomination is being opposed by some who question whether his personal beliefs are consistent with conservative principles. Specifically, I understand that some legal advice he may have given to the Seattle Public Library on a First Amendment issue several years ago has led to charges that he is indifferent (or worse) to the problem of child pornography. In response to these incredibly irresponsible charges, I would like to relate what I know from my own experience about Bill Dwyer's efforts to combat exploitation of children in Seattle.

Approximately two years ago, my 14 year old son succumbed to the lure of drugs and alcohol and left home to join the growing number of "street kids" who were enjoying the then-flourishing Seattle teen entertainment scene. The

magnet for these children was a teen-age discotheque known as the "Monastery." Its proprietor, George Freeman, was a two-time convicted felon, who had been successfully prosecuted three times in Seattle for distributing liquor to minors. The establishment had been in operation since 1976, and Freeman boasted that he was untouchable because he was "black, gay, and a minister of the Universal Life Church." Because of the lax juvenile laws, this man continued to operate an all-night entertainment establishment where adolescents as young as ten and eleven years old mixed with an older, predominantly gay, clientele.

Mr. Freeman's sense of invulnerability was not entirely misplaced. When I first complained to the police, they indicated that they would like nothing better than to put Mr. Freeman out of business, but that he was "protected by the Mayor and the gay community." Outraged, my wife and I formed a parents' organization called "Parents in Arms." Bill Dwyer was present at the formation of this group, and provided hundreds of hours of free legal advice as we plotted strategy to close down the Monastery and reform the juvenile laws in Seattle and the State of Washington. I am sure that without Mr. Dwyer's highly visible involvement, we would have been dismissed as a bunch of emotional parents who couldn't control their own kids and wanted to spoil the fun for everyone else.

I am sorry to say that Mr. Dwyer and his family paid a price for his unstinting support. On two separate occasions, both Mr. Dwyer and I received death threats that were directed not only at ourselves, but at our spouses and children. Bill never let up. His credentials and credibility gave us access to the highest decision makers in the City of Seattle. Ultimately, we were able to force an intensive police investigation that resulted in closure of the Monastery. In the course of the trial the entire history of drug dealing, with suggestions of male and female teenage prostitution rings and sexual exploitation of minors by adults, came to light.

At the same time that we were moving on the legal front, Bill was also advising Parents in Arms on the drafting of an ordinance to regulate teenage dance halls, imposing licensing requirements, age limits and reasonable closing hours. The cause was not a popular one in some segments of the community, and we were attacked repeatedly by those who feel that minors should have all of the constitutional rights of adults, including the right to destroy themselves with drugs and alcohol, if that is their desire.

There is a more personal side to this. Bill Dwyer has walked the streets of Seattle at midnight looking for my lost child. As a result of my experiences in the past few years, including my great disappointment at the changes in the juvenile laws over the past several decades that have made it virtually impossible for parents to protect their children, my own political views have undergone some fundamental changes. I have changed my voter registration from "Democrat" to "No Party." I doubt that I could subscribe to any "litmus test" for idealogical purity -- whether liberal or conservative. If there is a litmus test for human decency and moral courage, however, Bill Dwyer is the standard by which I would judge all others.

I am happy to say that my son is with us now. I also take some pride in saying that the City of Seattle is a better place with the Monastery gone and a reasonable teenage dance hall licensing ordinance in place. I thank Bill Dwyer in large part for both.

I would like to close by saying that I am one citizen who is deeply concerned about the status of youth in our society. I am an elected member of the Juneau Board of Education and Co-Chairman of the Mayor's Blue Ribbon Commission on Youth. Kids are my number one issue and concern. I could <u>never</u> support any nominee for a federal judgeship if I thought that they were indifferent to the pervasive sexual exploitation of children in this country today. I support Bill Dwyer precisely because he has stood shoulder to shoulder with us and literally laid his life on the line when it counted to help rid Seattle of the worst of its child exploiters.

I know that you have seen other judicial candidates, and that you have undoubtedly seen more than your share of form letters supporting or attacking these candidates. I write to you from the heart when I say that I cannot imagine a candidate more qualified by his unquestioned legal abilities, and his humanity, to assume that most awesome of responsibilities -- sitting in judgment on others.

Sincerely yours,

COUNCIL & CROSBY

David C. Crosby

William Dwyer, Esq.
Culp, Dwyer
2700 One Union Plaza
Seattle, Washington 981

Mr. CROSBY. This was a painful time in my life. But it is with joy that I come to you today to speak on behalf of Bill Dwyer. The debt that I owe him, and that the City of Seattle owes him can never be repaid.

I have brought with me this morning also a copy of the findings of fact and conclusions of law in the case in which the Monastery was ultimately shut down.

But first I would like to tell you just a little bit more about the Monastery because I think, in some ways, the horror needs to be painted graphically. I am told that when the opponents of Mr. Dwyer come in, they may give you some very graphic presentations, which I assure you will not, in any way, reflect the views of Mr. Dwyer. But let me paint a true picture for you about something that Mr. Dwyer opposed, opposed vigorously, and opposed successfully.

The Monastery boasted the best dance floor and the best sound system in Seattle—yet it was run as a supposed Universal Life Church. The building was a labyrinth. It was absolutely the worst place you could imagine for teenage entertainment.

Senator LEAHY. I recall well, the television stories on it. We even got it back in Vermont.

Mr. CROSBY. What is difficult to picture is being a parent looking for a child that has run away from home, and going into that building and seeing all the doors, the locked doors; the lockers for the kids and their clothes; seeing the communal hot tub in the basement which was laughingly referred to as "baptismal font"; seeing the small booths that overlooked the dance floor, which Mr. Freeman referred to as "confessionals," but which the kids referred to as "fuck booths." That is the difficult thing—for a parent to go through something like that, and to see the kids scurrying off left and right, and to see the small packages being handed back and forth, and the money exchanging hands. This place was, in many ways, a Biblical presentation of evil. And you ask yourself, how could something like that be permitted to exist in this day and age.

The Monastery existed on a number of levels. On one level it was a teenage entertainment establishment. On another level it was Mr. Freeman's personal playground. Mr. Freeman was a pederast. He and his twisted friends—an assortment of drug dealers and prostitutes—ran that place for their own personal pleasure as well.

The young men who were permitted to come in, and were given drugs and preferential treatment in return for sexual favors, lived in the tower with Mr. Freeman, which he referred to as the "rectory." They were known as "tower boys." Wine and alcohol (referred to as "sacramental drinks") were passed out to these kids.

They had a punch there that was referred to as "electric punch." They would start with a basic punch that had alcohol; patrons would then drop their drugs in it. You never knew what drugs had been dropped in it; you never knew the potency; you never knew the combinations. It reportedly gave off an "electric" glow.

Needless to say, the Seattle aide cars knew the address of the Monastery well. There were deaths there. On a regular basis, kids were being taken out of there with drug overdoses.

In 1981, when the police went in there and seized the membership list, the gay community and the ACLU went to the mayor.

Senator LEAHY. Mr. Crosby, I do not mean to cut you off. Because of, again, the same scheduling problem, I am going to have to recess now until 2:35 this afternoon.

[Whereupon, at 11:40 a.m., the committee adjourned to reconvene at 2:35 p.m. the same day.]

AFTERNOON SESSION

Senator LEAHY. I apologize to you, Senator Simpson, for the delay. We had a roll-call vote which further threw the schedule off, but unfortunately, we also had another hearing at 11:30 that required me to be there, and I could not leave.

Senator Simpson, Mr. Crosby, who is the founding member of the Parents-In-Arms of Seattle, Washington, was testifying when we broke off. If it is okay, we will allow him to finish his testimony.

Senator SIMPSON. Mr. Chairman, that is fine with me, and I just have some comments, and I will reserve those——

Senator LEAHY. You can do it now, if you would like.

Senator SIMPSON. No. I think if you had this gentleman testifying—how much longer were you going to have this gentleman?

Senator LEAHY. Whatever he needs? Is 5 minutes sufficient? Please come forward again, Mr. Crosby.

I should note, as I said before, Mr. Crosby's letter to the committee will be made a part of the record, and I would strongly urge each member of the committee to read it because I think it is one of the most powerful and moving letters that I have received as a committee member, over the past decade.

Please continue, Mr. Crosby.

Mr. CROSBY. Thank you, Senator.

This morning, I explained to you a bit about the Monastery. I apologize for the length of my remarks.

Senator LEAHY. No, don't apologize. I well understand your concern.

Mr. CROSBY. In the fall of 1984, my 14-year-old son Ian, along with a number of other teenagers from the area, discovered the Monastery. He got involved in drugs and alcohol. He dropped out of school as a freshman in high school, ran away from home, and was living on the street in Seattle. This was a boy who started out in the gifted education programs. Insofar as my wife, his mother and I were able to determine, he had dropped off the face of the Earth.

We called the authorities and complained about the Monastery. They indicated that the problem was as much a political one as a legal one.

I called Bill Dwyer the morning after my son disappeared. I was irate, indignant. At that time, I knew Bill only by reputation. I had never met him. His reputation was that he was the best trial lawyer in Seattle. I wanted the best. As an attorney myself, I expected to pay for the best. I also thought the group that I proposed to form would have no difficulty raising funds for such a worthy mission as closing the Monastery.

I explained the situation to Bill. Bill listened to me. He told me that he wanted to represent me and to represent the group. The following day, he told me that he had discussed the case with his

partners, and at his own suggestion—not at my request, at his own suggestion—he wished to do the case on a pro bono basis. That he would not charge our group a legal fee.

Now, I had never met the man before I explained this case to him. That night—based upon one or two meetings I had had with him—Bill Dwyer and I walked the streets of Seattle at midnight looking for my lost son. And I hardly knew the man.

Shortly after that, we had an organizational meeting to form the group which we subsequently called Parents-In-Arms. Again, that was with Bill's pro bono advice on the organization of the group.

We immediately set to work to lobby the city council to have the Monastery closed down, and to change the laws relating to teen entertainment in the City of Seattle. At that time, as I have indicated, there was no curfew. There was no restriction whatsoever on the ages of the kids that could be in the dance halls, and you frequently had situations where adults were mixing with kids in the early hours of the morning.

At the same time, Bill and I sat down, as lawyers, to develop the case against the Monastery. We did legal research, we contacted witnesses, we developed our evidence, we went to the police and we went to the prosecutor.

I have to explain to you at this time, that Bill's involvement in our efforts was absolutely critical to our success. Bill had a superb reputation in Seattle. He had practiced there for a number of years. The police chief, Pat Fitzsimmons, was a personal friend of his. When Bill got involved in the case things really started to move. The police sent in investigatory teams. On the first night into the Monastery their agents were able to pick up hard evidence to prosecute fourteen drug sales—in just one night in the Monastery.

Bill was also personal friends with the prosecutor, Norm Maleng. I can remember several meetings in which Bill's influence, and his friendship, both with the chief of police and the prosecutor, assisted us in getting the city to move on this particular institution.

George Freeman did not take this lying down. On two occasions Bill and I had our lives threatened in anonymous phone however calls. It was quite clear, however, who was originating these phone calls. These death threats extended not only to Bill and to myself, but also to our families. Bill never let up, and we were ultimately successful in closing the Monastery.

I would ask that you accept into the record at this time the findings of fact and conclusions of law in the case which is titled *"State of Washington ex rel. Norm Maleng* v. *George Freeman."*

Senator LEAHY. Without objection, so ordered.

[The information of Mr. Crosby follows:]

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON ex rel. NORM MALENG, Plaintiff, v. GEORGE FREEMAN, THE UNIVERSAL LIFE CHURCH, INC., a California corporation, THE MONASTERY, premises located at 1900 Boren Avenue, Seattle, King County, Washington, ROBERT C. HANSCOM and DOROTHY W. HANSCOM, and their marital community, Defendants.	NO. 85-2-06736-3 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF JUDGMENT

THIS MATTER was tried before the Honorable Gerard M. Shellan on June 5-7, 10-14 and 17-18, 1985. Plaintiff, State of Washington, was represented by its relator, King County Prosecuting Attorney Norm Maleng, by and through his deputies, Kevin M. Raymond and John W. Cobb; defendant Freeman appeared pro se; and defendants Hanscom were represented by their counsel, Charles E. Watts.

The court having heard the testimony and the witnesses on behalf of the parties, having reviewed the evidence, briefs and arguments of counsel and Mr. Freeman, and, therefore, being fully

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advised makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Norm Maleng is the duly elected Prosecuting Attorney for the County of King and brings this action on behalf of the State of Washington.

2. Defendant George M. Freeman was the owner, operator and manager of a business commonly known as "The Monastery".

3. Defendant Universal Life Church, Inc., is a California corporation doing business in Washington. It issued a "charter" to the Monastery.

4. The Monastery was a business operated at the premises located at 1900 Boren Avenue in the city of Seattle, county of King, state of Washington.

5. Defendants George C. Hanscom and Dorothy W. Hanscom, and their marital community, are the owners of the real property and improvements located at 1900 Boren Avenue, formerly operated as a business known as the Monastery by defendants Freeman and Universal Life Church. Defendants Hanscom were the lessors of a lease agreement executed with lessee/defendant George M. Freeman on May 30, 1983. That lease agreement expired on May 31, 1985 and the business known as the Monastery is now closed.

6. Boren Avenue is a public road located in the city of Seattle, county of King, Washington.

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7. All defendants were properly served with notice of this hearing.

8. There was a continuous pattern and course of conduct at the Monastery that tolerated and suffered a number of unlawful activities, including the use and abuse of various controlled substances and alcohol.

9. There was a litany of drug dealing both within the confines of the Monastery and immediately outside the premises. This drug dealing was engaged in by Monastery patrons or admittees, staff and others. This drug dealing, conducted over a lengthy period of time, was open, flagrant and blatant, and occurred without any particular pretext that it was violative of the law.

10. The use of controlled substances and the consumption of alcohol at the Monastery was conducted openly and brazenly by juveniles who would assemble in groups in different parts of the Monastery.

11. A number of controlled substances, including marijuana, cocaine, MDA, acid and crystal, were regularly used at the Monastery.

12. The Monastery constituted a mecca or mini-mart of all sorts of drugs. Such drugs were readily available to those who wanted to purchase them.

13. There was no strict admission policy at the Monastery and the only basic requirement for entry was the

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financial ability to pay $6.00 and a re-entry fee of $1.00. The alleged requirement that individuals be "members" of the Monastery, as customarily construed, was both a fantasy and a sham.

14. The majority of the Monastery's patrons or admittees were between the ages of 16 and 18 years, a few were much older, and some were as young as 11 and 12 years of age. Approximately 10-15 percent of the Monastery's patrons or admittees were under the age of 16.

15. Many of the Monastery's patrons or admittees were of a type easily preyed upon by others.

16. Juveniles occasionally overdosed at the Monastery, some becoming sick and others vomiting, either from drugs or alcohol.

17. Restrooms at the Monastery were structurally open and used interchangeably by males and females.

18. The Monastery was used by juveniles to engage in sexual conduct and was a place where prostitution and solicitation occurred.

19. The above activities were not merely confined to the period of time in which plaintiff conducted its investigation of the Monastery (beginning in March and ending in April of 1985); similar illegal activities were occurring at the Monastery as early as 1980 or 1981. Further, defendant Freeman had knowledge of the existence of such activities as early at 1980 or 1981.

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20. The area immediately outside the Monastery, particularly the parking lot, was also a marketplace of drugs, alcohol consumption and unlawful sexual behavior. There was a nexus or causal connection between the operation of the Monastery and the problems associated with the areas immediately outside the premises.

21. There was testimony by some of the defendant Freeman's witnesses, including former patrons and employees of the Monastery, that seemed to indicate that there were never any drugs or alcohol available at the Monastery, and that there were no sexual irregularities there; that, in fact, the Monastery was just one happy family. Although some admitted that there were occasional violations of the law at the Monastery, they testified that when the perpetrators were apprehended, they were quickly removed from the premises. Such testimony, in the court's opinion, does not appear to be credible and certainly runs counter to the testimony of people who actually bought and sold drugs and personally witnessed drinking and sexually deviant behavior at the Monastery.

22. There was substantial testimony and evidence introduced by defendant Freeman that related to his allegations of conspiracy and selective enforcement.

23. The Monastery was a magnet for people who wanted either to dance or to engage in the unlawful activities previously described.

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24. Defendants Freeman and the Universal Life Church directly and indirectly allowed, approved, condoned, suffered and acquiesced in these previously-cited unlawful activities at the Monastery, which affected primarily juveniles between the ages of 14 and 18. In some instances even younger children were affected.

25. A child in our society who is between the ages of 12 and 14 does not, in all instances, have the maturity, knowledge, experience or know-how to decide on his or her own what is good for his or her own body.

26. There was no credible testimony before the court to indicate the wrongful behavior of defendants Freeman and Universal Life Church could not be reasonably expected to recur absent injunctive relief.

27. The defendants Hanscom, as landlords, had no knowledge about the illegal transactions and occurrences ongoing at the Monastery and were innocent parties.

28. The premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, has become and does remain a place in and upon which acts of lewdness, assignation, or prostitution are conducted, permitted, carried on, continued or exist.

29. The premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, has become and does remain a place within any city or upon any

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public road where drunkenness or breaches of the peace are carried on or permitted and is a place of resort where "opium smoking" is permitted, both in fact and within the manifest intention of the legislature.

30. Defendants Freeman and the Universal Life Church do suffer or maintain on the premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, intoxicating liquor which is kept for sale or disposal in contravention of law.

31. The premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, has become and remains a place within a city or upon a public road where drunkenness, fighting or breaches of the peace are carried on or permitted, and is a place of resort where "opium smoking" is permitted, both in fact and within the manifest intention of the legislature.

32. The premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, has become and does remain a place where a business is operated in defiance of laws regulating the business in that it is a dance-house into which minors are allowed.

33. The premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, has become and does remain a place where a business is operated in defiance of laws regulating the business in that defendants

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Freeman and the Universal Life Church admit minors onto the premises of a reputed house of prostitution or assignation, a place where "opium is smoked", both in fact and within the manifest intention of the legislature, and a place where narcotic drugs are used.

34. The premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, has become and does remain a place where a business is operated in defiance of laws regulating the business in that defendants Freeman and the Universal Life Church knowingly keep or maintain a dwelling, building, or other structure or place which is resorted to by persons using controlled substances in violation of Washington State drug laws for the purpose of using these substances, or for keeping or selling them in violation of state drug laws.

35. There is no plain, adequate or speedy remedy at law available to plaintiff, and plaintiff and the public it represents will suffer actual and substantial injury unless defendants Freeman and the Universal Life Church are permanently restrained from such conduct.

36. The interest of plaintiff in protecting its citizens from this dangerous nuisance clearly outweighs defendants Freeman and the Universal Life Church, Inc.'s interests in the uninterrupted operation of the Monastery.

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37. Continued operation of the Monastery would constitute a clear threat to the health and welfare of the citizens of this community.

38. The public interest will best be served by granting plaintiff permanent injunctive relief against defendants.

CONCLUSIONS OF LAW

The court having made the above Findings of Fact now, therefore, makes the following Conclusions of Law:

1. This court has jurisdiction over the parties and the subject matter of this action.

2. There is no credible evidence of any type to show that this action was the result of any manner of conspiracy against any of the defendants, or that there was any discrimination against any defendant based on race or sexual preference.

3. This is not a case of First Amendment magnitude relating to freedom of religion. The United States Constitution absolutely protects religious beliefs but does not absolutely protect conduct.

4. There is a duty on the defendant-operators and others who operate this type of activity to supervise, regulate and control it. This duty extends not only to the interior premises, but also to the area immediately surrounding such premises.

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5. The initiation of this nuisance action against these defendants did not constitute selective enforcement and was, therefore, not violative of the Equal Protection clause.

6. Cessation of the operation of a nuisance subsequent to the initiation of a nuisance abatement action does not deprive a court of jurisdiction to hear the case and determine whether a nuisance existed at the time the lawsuit was brought.

7. Based on Findings of Fact 8-28, the premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, is a moral nuisance under RCW 7.48.052(6).

8. Based on Findings of Fact 8-27 and 29, the premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, is a moral nuisance under RCW 7.48.052(7).

9. Based on Findings of Fact 8-27 and 30, the premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, is a public nuisance under RCW 7.48.140(8).

10. Based on Findings of Fact 8-27 and 31, the premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, is a public nuisance under RCW 7.48.240.

11. Based on Findings of Fact 8-27 and 32, the premises located at 1900 Boren Avenue, city of Seattle, county of King,

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Washington, known as the Monastery, is a public nuisance per se for violation of RCW 26.28.080(2).

12. Based on Findings of Fact 8-27 and 33, the premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, is a public nuisance per se for violation of RCW 26.28.080(3).

13. Based on Findings of Fact 8-27 and 34, the premises located at 1900 Boren Avenue, city of Seattle, county of King, Washington, known as the Monastery, is a public nuisance per se for violation of RCW 69.50.402(a)(6).

14. The activities occurring at the premises located at 1900 Boren Avenue which constituted nuisances in the manner described in paragraphs 7-13 of these conclusions were discontinued on or before June 1, 1985.

15. The activities and conduct of defendants Freeman and the Universal Life Church are in violation of the law in the manner heretofore cited and said operation should be abated in all respects.

16. Plaintiff, State of Washington, has made a substantial showing by clear and convincing evidence that it has a clear legal and equitable right to be free of such moral and public nuisance.

17. The State has made a substantial showing by clear and convincing evidence that it has a well-grounded fear of immediate invasion of the right to be free of such moral and

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public nuisance if it is not granted the permanent injunctive relief and abatement it seeks.

18. The State has made a substantial showing by clear and convincing evidence that the acts complained of are resulting, and will continue to result, in actual and substantial injury or irreparable harm to plaintiff and the public it represents if it is not granted the permanent injunctive relief and abatement it seeks.

ORDER

The court having made the above Findings of Fact and Conclusions of Law now, therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT

1. Operation of the Monastery by defendants Freeman and the Universal Life Church is hereby abated in all respects.

2. Defendants Freeman and the Universal Life Church are hereby permanently enjoined from establishing, operating, conducting or allowing others to establish, operate or conduct, whether as an owner, manager or in any other supervisory capacity, activities which are identical or substantially the same as those that have heretofore been conducted at the Monastery.

3. The permanent injunction against defendants Freeman and the Universal Life Church shall apply to all localities within the jurisdiction of this court.

4. The activities proscribed by this permanent injunction shall include, among others, the following:

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(a) the use, sale, possession or consumption of intoxicating beverages by minors, or the act of tolerating, facilitating, or condoning any such consumption of alcohol within any such premises, including by non-minors, unless there has been full compliance with all applicable liquor laws of the state of Washington;

(b) the use, sale, trade, offering, possession or consumption of any controlled substances by minors or others, or any conduct that tolerates, condones, knowingly permits or acquiesces in such behavior by anyone within such premises;

(c) any conduct that permits, tolerates, condones, ignores or acquiesces in any act of prostitution or the solicitation thereof, lewd conduct or sexually deviant behavior among or between minors within such premises; and

(d) any act or conduct which actively intends to encourage, promote or overtly tolerate and suffer any of the previously-described activities or conduct with respect to minors within any such premises.

5. This injunction shall in no way apply or relate to any expression of religious belief, whatever or wherever that may be, or to any worship that is incidental to such belief so long as such conduct does not impact or violate any law of compelling state interest, especially those relating to the protection and welfare of minors.

6. The terms of this permanent injunction shall also apply to the defendants Hanscom as it relates to any possible re-lease of the premises located at 1900 Boren Avenue to any of

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the defendants or to any other person or entity engaging in similar conduct there which defendants have actual or constructive knowledge.

7. Defendants Freeman and the Universal Life Church are permanently enjoined from harassing or violating the privacy, directly or indirectly, of any individual in any way associated with this case.

8. Judgment shall be entered against the defendants for costs and statutory attorneys' fee in the amount of $100.00.

DONE IN OPEN COURT this 29th day of July, 1985.

JUDGE GERARD M. SHELLAN

Presented by:

NORM MALENG
King County Prosecuting Attorney

By _____
KEVIN M. RAYMOND
Deputy Prosecuting Attorney

and

By _____
JOHN W. COBB
Deputy Prosecuting Attorney
Attorneys for State

Copy received:

By _____
GEORGE M. FREEMAN, pro se

By _____
CHARLES E. WATTS
Attorney for Defendants
Hanscom

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85-6-112 DK-22

Mr. CROSBY. I would urge each of you to read the findings and conclusions, to see just how far down we had permitted things to go in the City of Seattle.

We never got anything but the best legal advice from Bill, and his ability to put us in touch with the key decision-makers in the city enabled us not only to succeed in the trial, but also to get an ordinance passed regulating teen entertainment establishments. For the first time, the hours of operation of these teenage nightclubs were restricted, so that they had to close before the bars closed; the ages of kids who could be in these clubs was also raised, so that you no longer have the situation of 10- and 12-year-old kids up all night long with adults.

Now I can tell you, since the ACLU has apparently become somewhat of an issue in this, we had no friends in the ACLU on this. The ACLU regarded us with great suspicion, in part because they regarded this ordinance as raising the old issue of curfews, which they were very much opposed to. We had a good deal of antagonism from the ACLU, and I have to say that the ACLU, at least on the issue of children's rights, has been as wrong-headed and as dangerous as I could possibly imagine. Its view appears to be that kids should have all the political and civil rights of adults. That philosophy certainly was inconsistent with what Bill and I were trying to do to protect kids from predatory adults in the City of Seattle.

Senator LEAHY. So Mr. Crosby, it would be your feeling that some of those who would suggest that if we were to turn Mr. Dwyer loose on the court, we are turning loose a person who has no understanding of children and no concern for the morals and morality and safety of children, that those people might be a bit off the mark? Would that be a fair statement?

Mr. CROSBY. I wish I could insert in the record a loud guffaw. That is the only thing that can burst the bubble of this nonsense.

Bill Dwyer is the most fundamentally decent human being I have ever met in my life. He threw himself into this case. Personally and professionally he gave his all, and he never asked for a penny in return.

He did that because Bill Dwyer is a father, he loves his children, and he empathized with a father who was losing his child and wanted to help. I am sorry I am getting emotional, but I really do not have too much more to say on this.

Senator LEAHY. I appreciate that. I hope all is well with that child today.

Mr. CROSBY. It is. I am glad to report that things have gone very well. I thank Bill Dwyer in large part, and I think the City of Seattle should thank Bill Dwyer.

Senator LEAHY. How is your son enjoying Alaska?

Mr. CROSBY. He is. He enjoys fishing. He enjoys getting out on the water, and next year he is looking at going to college. I never thought, 2 years ago, that I would sit here and be able to say this.

Senator LEAHY. Alaska is the only place where I stop thinking about the severity of Vermont winters, except for one July in Wyoming. [Laughter.]

I yield to the Senator from Wyoming.

Senator SIMPSON. Mr. Chairman, I thank you for your courtesies to me which are continuing in this place, and I heard you talk

about your agenda, and what you had going, and, why not?, you are in the majority. That is what we expect of you.

Senator LEAHY. We do not get paid any extra, though.

Senator SIMPSON. I know. They often confuse us, and say who is that handsome, bald fellow with the glasses? It is either Leahy or me.

Senator LEAHY. Or James Watt.

Senator SIMPSON. We will never know. [Laughter.]

But I have visited with Bill Dwyer and his lovely wife and daughter yesterday, and I have read the book, or seen the book, "Show Me!", which is an interesting book. It might be done a little differently than I did it with our three children, but, you know, when I was a kid, I was reading some real stuff at that age, you know, and here I am. And, you know, somewhere along the line, I was very troubled in 20 years of practicing law, by those who seemed so terribly pinched and drawn in with regard to human sexuality—which is a very significant part of human life—that they could not seem to express that on to their children, and often, those children seemed to me, at least—no one gave me the judge credentials of my fellow humans—but it seemed to me they had a lot tougher time in life than others. That is another issue.

But here we are, apparently with a man who is exceptionally well-qualified by the American Bar Association, a rating which we do not see much around here, do we, Mr. Chairman? And here it is, the highest rating in the ABA. We all can challenge their ratings, and we do, depending on which side of the issue we are on, and that will come up next week, too.

But I, in my review of the record, and all of it, I think this is an excellent addition, and what you add to it, Mr. Crosby, I think is very important, as I know what I know about this. I believe you referred to it as a "gothic horror." The Monastery. That name itself is descriptive, and how this man who is before us today as a nominee, is the man that busted up that operation, in essence, is that not correct?

Mr. CROSBY. That is correct, Senator.

Senator SIMPSON. And that operation was involved, or people in there were involved in child molestation and controlled-substance delivery and sale, and the whole works, prostitution. Is that correct?

Mr. CROSBY. It is unquestionably so and the court so found.

Senator SIMPSON. And then, as you say, when you went to him, he responded not only as an attorney, a pro bono attorney, on something that obviously gave him a great deal of concern, but also as a parent and as a friend of yours later?

Mr. CROSBY. Yes. I certainly hope so. I count myself most fortunate.

Senator SIMPSON. Well, you know, to see an entire objection to a man attaining the bench, the Federal Bench, swirling around a book called "Show Me!" which was unanimously approved by a library, and not by the nominee, and having been a member of the ACLU—I suppose that will come up next—I want to tell you a hideous confession. I was once a member of the ACLU.

Senator LEAHY. This meeting is adjourned. [Laughter.]

Senator SIMPSON. I remained so for several years until the *Skokie* decision. That was too much for me, when they said, you know, it was good for Nazis to march around in an area where the relatives of Polish people who had been terminated lived, and so I jumped ship at that point. But they do good things and they do bad things, just like real live human beings.

So I appreciate your testimony, and the very moving letter, as the Chairman has indicated, and I certainly concur.

I do not have any more questions of you, sir, but would like to, Mr. Chairman, with your permission, ask a few more questions of Mr. Dwyer, if that would be appropriate. Not more than 10 minutes.

Senator LEAHY. Take all the time you want, and I thank you very much, Mr. Crosby.

I would also note for the record a letter from the Adam Walsh Child Resource Center of Greater Washington to be included in the record.

[The information of Mr. Chandler follows:]

Adam Walsh Child Resource Center
Of Greater Washington
Formerly
MISSING Children of Greater Washington

September 10, 1987

Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C. 20510-6275

Dear Senator Biden:

I am writing in reference to your letter of September 4, 1987 regarding the hearings of the Senate Judiciary Committee of September 11, 1987.

The Adam Walsh Child Resource Center is a child advocacy organization. The mission of The Center is to improve the environment for children through education and the strengthening of laws that work to protect this most precious resource.

In some cases The Centers' input even if ideally appropriate, may be inadvisable as a matter of policy or unworkable as a matter of practice. This is the case regarding oral testimony by me during the hearings concerning the nomination of Mr. William L. Dwyer to be U. S. District Judge for the Western District of Washington. While conscious of other individuals and organizations interests in this matter, we would implore you to consider the following matter germane to the aforementioned hearings.

It was brought to the attention of this writer in July of this year that Mr. Dwyer was called upon to render a "legal opinion" concerning the book Show Me! The opinion was given to the Seattle Public Library Board and resulted in the decision to continue to promote, distribute and generally make available to the public, the book Show Me!

The book Show Me! is a picture guide-book using prepubescent and teenage children performing various sexual activities for the purpose of instructing children as to the mechanics of these activities. The content of the book clearly violates current federal and state laws regulating such 'child pornography'. We reach this conclusion based on the Supreme Court's unanimous decision in New York v. Ferber (1982) 102 S.Ct. 3348, and subsequent rulings such as U. S. v. Langford (1982) C.A. Wis. 688 F.2d. 1088 and U. S. v. Nemuras (1983)

Local Advisory Board

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Public Service Director
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Family Counseling Centers
of Northern Virginia

Joan Tillman
University of the
District of Columbia
Early Education

Charlotte Williams
Youth Hostels

Barbara Wyatt
Wyatt Enterprises, Inc.

Executive Director
James N. Chandler

Greater Washington Office
216 South Peyton Street
Alexandria, VA 22314
(703) 683-8333

National Office
1876 University Drive, Suite 306
Fort Lauderdale, Florida 33322
(305) 475-4847

D.C. Md. 567 F.Supp. 87. These decisions clearly support the intent of 18 U.S.C.A. 2251 - 2256. This federal legislation and history provides that no exception is given to any depiction of children in sexually explicit situations. This goes so far as to remove this book from protection under the First Amendment, and further provides that no work depicting live photographic reproductions of children as subjects of pornographic material may have protection under the exceptions listed within said statutes.

It is distressing to read the following finding by Mr. Dwyer as stated by the Seattle Public Library Board on September 26, 1986:

> "The Board conducted a thorough review.....assisted by City Attorney Doug Jewwett as well as Mr. Dwyer. The main reasons for our conclusion....
>
> - The text of the book is serious and educational and clearly is not within the scope of any law prohibiting expression;
>
> - It is doubtful that any of the photographs in the book would be found to be within the catagories prohibited by the state and federal child pornography statute;
>
> - Both state and federal statutes are accompanied by disclaimers of any intent that they would apply to legitimate works of sex education. In the state statute the disclaimer appears in the law itself, and in the federal statute the disclaimer appears in a statement by the U. S. Department of Justice which is part of the legislative history; and
>
> - Even if the statutes were otherwise, the book would have a substatial claim to protection under the freedom of speech guaranty of the First Amendment of the U. S. Constitution."

We not only disagree with the above statement, we do not see where the opinion was constructed from the same laws and history we reviewed. An example: the above four points adhere to the assumption that child pronography must meet the criteria of being judged obscene through the use of the 'Miller' test [Miller v. California (1973) 413 U. S. 15], yet reading from the Opinion of the Court in New York v. Ferber we find

ADAM WALSH CHILD RESOURCE CENTER

the following: "It is irrelevant to the child [who has been abused] whether or not the material... has a literary, artistic, political or social value." ..... We therefore cannot conclude that the 'Miller' standard is a satisfactory solution to the child pornography problem."

Persuant to this information it should be stated that the real issue is the dangerous fact that as a result of the information provided to the Library Board, the book remains available for public consumption.

The position of the Adam Walsh Center is that the book Show Me! be removed from all public libraries and institutions of learning. The most compelling evidence to justify this position is the book itself. This evidence is no longer available as the result of the decision by the publisher, St. Martin's Press, Inc. of New York, to cease publication on August 16, 1982, as a result of the Ferber decision.

Our position is supported by such experts in the area of child pornography as Supervisory Special Agent Kenneth V. Lanning, F.B.I. Academy, Quanitco, Virginia and former Executive Director of the National Center for Missing and Exploited Children, Jay Howell, Esq. As stated by them, Show Me! is "the pedophile's bible." They report it is often found in the collections of arrested pedophiles and is used by molesters to "educate" and seduce children. It is the single most commonly found item of evidence used in the conviction of child molesters.

I am sure you will concur with our position in this matter, and I trust you will use this imformation to benefit the children entrusted to your care.

Thank you for your consideration in this matter.

Sincerely,

James N. Chandler
Executive Director

cc: Senator Strom Thurmond
Mr. John Walsh
Mr. Denny Abbott
Mr. Ken Lanning
Mr. Jay Howell
Ms. Andrea Vangor, Ph.D.

Adam Walsh Child Resource Center Inc

Formerly MISSING Children of Greater Washington

THE ADAM WALSH CHILD RESOURCE CENTER OF GREATER WASHINGTON is a non-profit organization, dedicated to making America safer for children. The Center's programs are aimed both at preventing the abduction and molestation of children and effecting positive changes in systems that serve children.

The Adam Walsh Center is a primary source of information for parents who want to know how to better protect their own children and how to help bring about positive changes for all children.

HOW WE BEGAN

Missing Children of Greater Washington, Inc., is a localized organization, that has been established by concerned parents in your neighborhoods, who believe that such a group is necessary, to advocate for the safety, and insure the rights of their children.

Incorporated in 1984, the organization came about through the efforts of several area residents, some of whom had personal experiences involving victimization, and others who simply had compassion for the subject and wanted to do something about it.

On July 27, 1981, six-year-old Adam Walsh was abducted from a shopping mall in Hollywood, Florida. After two weeks of what has been described as the largest manhunt in Florida's history, Adam's remains were found 150 miles north of his home.

His parents, John and Reve Walsh, have not let Adam's death become just another statistic. They led a national campaign which resulted in passage of the Missing Children Act and establishment of a national computerized file for missing children and unidentified bodies.

Their fight continues through the Adam Walsh Child Resource Center—a fight to change laws and policies, and to teach children and parents of the need to protect themselves.

OUR SERVICES

A Clearinghouse of Information

The Adam Walsh Child Resource Center of Greater Washington will provide information about a variety of resources available on matters related to the issue of missing children. Through our publications, we work to educate children and families about the dangers of abduction, child sexual abuse, and runaway situations. All materials are available, at no cost, to the general public.

Information and Referral Service

The Center will advise parents if their child is ever missing or abused. We will refer them to the proper authorities and agencies equipped to handle these incidents.

Legislation for Children

Children can't vote, but the Center provides a common ground for those who can. Citizens can rally around us in support of issues concerning the prevention of "missing and exploited children." We'll raise a meaningful voice in this community supporting legislation ensuring the well-being of our children and offering assistance to the victims.

Educational Programs

The primary services offered by the Center include awareness and prevention presentations to local community groups and governmental agencies, such as: school children of all ages; teachers; PTA's; civic groups; social service agencies; and law enforcement officers.

For information concerning a presentation, please call our local office. Programs are available to any interested group.

SUPPORT

The Adam Walsh Resource Center of Greater Washington, believes that only by rallying around the organization, will we have the strength to make a safe community for our children.

The Center is supported through donations from the general public, charitable foundations, the corporate sector and fund raising activities. Contributors are placed on our publication distribution list and will receive all materials we develop, as well as our quarterly newsletter. This list is maintained as an annual membership roster and it's numbers will lend credence to our concerns when we identify weaknesses and attempt to strengthen them. We are a community based organization, and our efforts are directed towards the District of Columbia, Maryland, and Virginia.

All contributions are tax deductible and should be mailed to our local office. For further information concerning our organization, please call (202) 686-1791.

Volunteer individuals and services are needed and always welcome.

Greater Washington Office
4200 Wisconsin Avenue, N.W. Suite 201
Washington, D.C. 20016
(202) 686-1791

National Office
1876 University Drive, Suite 306
Fort Lauderdale, Florida 33322
(305) 475-4847

Senator LEAHY. Mr. Dwyer, please come back up.

Senator SIMPSON. Mr. Chairman, I thank you very much.

As I say, Mr. Chairman, I have had an opportunity to review the record and to visit with this nominee, and I feel he would be an excellent addition to the Federal Bench.

I think it is very important to notice that the President of the United States has noted his confidence in this nominee twice, and clearly, the President has every confidence in your ability to live up to this exceptionally well-qualified rating you received from the ABA.

I know that you testified this morning on the book, "Show Me!." I will not ask you to repeat that, but I would just ask you, now, you have previously been a member of the American Civil Liberties Union?

Mr. DWYER. Yes, Senator, I have. That is correct.

Senator SIMPSON. And what was the extent of that involvement?

Mr. DWYER. Well, I believe I became a member of the ACLU probably in the late 1950's. I was a member of the local board from about 1959 to 1961. And to the best of my knowledge and recollection, I ceased being a member probably in the late 1960's or early 1970's, and the reason was that although I thought, and still believe, that the ACLU is a valuable organization, I found myself in disagreement on specific issues often enough so that I was simply more comfortable not being a member.

I do want no misunderstanding about it, though. I still believe it is a valuable organization, although I often disagree with it, and I have made contributions from time to time, even while not being a member.

Senator SIMPSON. That is interesting. You and I are near the same vintage. That matches my pattern. I think I joined in the late 1950's, and thought they were doing great work in the area of privacy, protection of personal privacy and rights, and I still think they do a lot of great and good things, but they also did some things which just said to me, "I think I have had enough", and I stepped out.

But certainly, that should not be anything whatsoever to do with your present appointment, or nomination. In my mind that is totally inappropriate to even discuss. That is my view.

But just quickly, and I know you have probably gone through this, so I will just summarize it all. You told the committee regarding the nature of the request you received from the Seattle Public Library with regard to this book, "Show Me!" and you explained you were hired to render a legal opinion, that they went to you—if I may just review this a moment—as to whether the library would be in violation of any law if it retained the book on its shelves, and what the board's position would be if a court action of some kind was commenced. Is that correct?

Mr. DWYER. That is correct. Yes.

Senator SIMPSON. Then you gave your advice, and you prepared about a 3½ page opinion, and I have read that. Or a letter to the board——

Mr. DWYER. I did not prepare any written opinion or letter, Senator.

Senator SIMPSON. Wasn't there a letter?

Mr. DWYER. There was a memo issued afterward by the librarian which summarized, to his staff, what had happened, and why the book was retained in the collection.

Senator SIMPSON. That was the 3½ page document, approximately, was it?

Mr. DWYER. I believe so.

Senator SIMPSON. And signed. I saw a copy of that.

Mr. DWYER. That is right.

Senator SIMPSON. All right. And you advised the library that they would not be in violation of any statute to retain the book, and that it certainly could do so under any proper reading of the first amendment?

Mr. DWYER. I couched my advice more in terms of probabilities. The question they asked was: if they retained the book—and it was in the library on a reference-only basis, could not be checked out—if they continued to retain it, would they be violating any law? In other words, would the library be committing a crime? That was the one question they put to me. My answer was that, if it were tested in court, probably a court of law would not find that the library was committing a crime by continuing to have the book in the collection.

Senator SIMPSON. And then no court, at any level, has yet found this book to be illegal to publish, or sell, or distribute, isn't that correct, as far as you know?

Mr. DWYER. To the best of my knowledge, that is correct. We learned at the time that the book had been tested in two or three jurisdictions, I believe, under general obscenity laws, and found to be not obscene. It had never been tested under child pornography statutes, and to the best of my knowledge, to this day, it still has not been, although there has been a lot of talk about it, and although we expected some litigation in Seattle, and I, for one, would have welcomed a definitive court ruling on the point.

None has been made, to my knowledge, anywhere in the country, and in the meantime, the book continues to be carried in many leading libraries throughout the United States.

Senator SIMPSON. And do you consider yourself to be an advocate of strong anti child-pornography laws?

Mr. DWYER. I most certainly am. I believe strongly in them. I think they are essential. I was very happy about the Supreme Court's ruling confirming their constitutionality.

Senator SIMPSON. That pleased you, that decision?

Mr. DWYER. I beg your pardon?

Senator SIMPSON. You say that decision pleased you very much, the strong Supreme Court decision about child pornography and its——

Mr. DWYER. Yes. The decision—we are talking of course about the *Ferber* case—the *Ferber* decision has left some questions unanswered, but in due course, they will be answered, and the net result, I am very confident, will be continued strong protection of children under the child pornography statutes.

Senator SIMPSON. Then when you finished your work and presented your comments to the board who had hired you, then whose decision was it in the final analysis, to place and retain the book, "Show Me!" in the Seattle Public Library?

Mr. DWYER. That was the board's decision, and I was not asked whether the book should be retained, or not. That determination involved a number of non-legal considerations such as taste; offensiveness or lack of offensiveness; and compliance with the library's general standards for retention of materials.

All of those were up to the board, and perhaps even more so to the professional library staff of the Seattle Public Library. I merely rendered my one legal opinion; I rendered it in terms of probabilities, and I did suggest to the board the possibility of the board's bringing a declaratory judgment case against these two competing groups that were making conflicting demands, a case in which the library would be neutral and would merely ask for the court's declaration.

That would have given us a definitive answer in court. The board chose not to do that because it did not wish to initiate litigation on a book in its own collection.

Senator SIMPSON. So the decision of the board, I believe was unanimous to do that, was it not?

Mr. DWYER. The decision was unanimous, and the decision was to keep the book in the collection until and unless a court of law were to determine that it did not belong there.

Senator SIMPSON. How many members are there on the board?

Mr. DWYER. Five, I believe.

Senator SIMPSON. And later, then, and finally—and I will conclude—the library placed the book, retained the book "Show Me!" on its shelves.

Were any later criminal charges ever filed by the King County prosecuting attorney against the library after it made its decision based upon your advice?

Mr. DWYER. No charges were filed, either Federal or State, and no civil action was commenced by anybody, although we had expected one from one of these anti-pornography groups in Seattle.

Senator SIMPSON. And then, when you were under consideration for this job, for the nomination, didn't the King County prosecuting attorney who was there at that time take a position regarding your qualifications to receive this nomination?

Mr. DWYER. Yes. Prosecutor Maleng was kind enough to send a letter to the Attorney General endorsing my appointment to the U.S. district court.

Senator SIMPSON. And I believe he said, too, that the highest priority that he had had since his election in King County had been to fight child abuse, and he said, I believe, that you shared his deep personal commitment toward that critical issue and had assisted him, immeasurably, in that cause.

Mr. DWYER. Yes, sir. And it should be mentioned here, since we are on the East Coast and Norm Maleng is on the West Coast, that he has been one of the national leaders in the improvement of legal protection for children, including the adoption of child pornography statutes.

Senator SIMPSON. Mr. Chairman, I thank you very much for giving me this opportunity to come back later in the day, after you started this morning, and thank you for your patience.

I just personally believe this is a splendid gentleman, and I hope that we will see a swift processing of his nomination, and go for-

ward with something that has gone entirely too long in my mind. Everybody has had an opportunity to do everything they could have done in this.

That is one thing about our perilous task. Nothing ever dies around this place. It just seems to rise up and bubble up, continually.

It seems to me that we have really kind of "ragged" this one around too much. It is not fair to you, as a human being, nor to your fine family, and we ought to get about our business, and the book really does not have anything to do with you.

I have been in a lot of cases in my life, and so has this prosecuting attorney to my right, that were not popular. That goes with the territory when you practice law. But at least you and I, and the Chairman, have been in combat, and on many occasions, at least to me in this place, there are judgments made by attorneys who have never dealt with any human beings.

They are bright and they are thoughtful, and if there were another human being in front of them saying, you know: "I'm going to make a terrible choice here soon. I'm going to get a divorce or I'm going to commit suicide." That happens in real life, and the terrible part of it is, I think if some of these people I know that are so bright, so sharp, so intellectually directed and divined, would almost tell another human being like that to get out the door because they could not handle it. And that is the way it works, too, but it ain't the way you practice law in real life.

So I commend you, and hope that we will get over these things here that are totally extraneous, and get on with putting you on the bench where you can assist parents in stamping out child pornography, and doing the things that a thoughtful judge will do.

And I do not know what you will do, but my hunch is that you will do the right thing, from what I read, and I thank you, Mr. Chairman.

Senator LEAHY. Thank you, Senator. There has been indication from Senator Thurmond that he may want another day of hearings. If he does, of course we will accommodate him. I will ask him, though, if that is possible, that this record is complete enough that it will not be necessary. I hope that the chance of being with the Holy Father this afternoon will be good for both the——

Senator SIMPSON. You?

Senator LEAHY. No, no. Senator Thurmond. Be good for both the Pope and Senator Thurmond, and one or the other of them will come out okay on this—or both, I hope, of course—and that he will feel we have had enough. I certainly have.

I also just want to make a parenthetical statement. I have been on the Judiciary Committee for 10 or 11 years, and in the Senate for 13 years. I have probably been to literally hundreds of confirmation hearings, everything from judges to Cabinet members, to whatever else, and it is a common courtesy for the Senators from a particular State to come and introduce somebody, and say nice things, which they mean. I do not mean to denigrate that at all. It really does weigh with us, too, how the Senators from the State feel.

But then, because of their schedule, they leave. Dan Evans has to be one of the busiest Senators in this body. In all those hundreds of

confirmation hearings, this is the only time, especially in as lengthy a hearing as this has been—we started early this morning and are still going on now—where a Senator stayed through the whole hearing.

And if you will allow somebody from the other side of the aisle to say it, I consider Governor Evans, Senator Evans, to be one of the true gentlemen of this body, and it is just another mark of what all of us take for granted, that a very well-respected, true gentleman, Senator Evans has been here with the nominee all day. And I suspect that you will probably concur with that, wouldn't you?

Senator SIMPSON. I would, indeed, and I have come to know this man. He was a remarkable Governor and he is a well-respected colleague, and, more importantly, he and Nancy are lovely friends.

Mr. DWYER. Mr. Chairman, may I add a couple of words for the record.

Senator LEAHY. Of course.

Mr. DWYER. Mr. Crosby was very generous in crediting me with the closure of this nightclub that was called the Monastery, but since all of this will be on the public record in perpetuity, I think it should be mentioned that the closure of that nightclub was brought about, to a great extent, by the excellent work of the Seattle Police Department and the King County prosecuting attorney, and I know Mr. Crosby agrees with that, and that is deserving of being placed in the record, I believe.

I want to thank you, Mr. Chairman, and Senator Simpson, both very much, for your kind comments, and I assure you that in the event my nomination is confirmed, I will do my very best to justify your confidence.

Senator LEAHY. Thank you very much. Thank you, Dan.

We have, then, remaining, one nominee, James A. Parker, who probably felt that we would never get to him.

Mr. Parker, will you raise your right hand, please. Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PARKER. I do.

TESTIMONY OF JAMES A. PARKER, NOMINATED TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO

Senator LEAHY. Mr. Parker, I apologize for the long delay and the amount of time it has taken both you, and the members of your family, and friends who are here. This is meant somewhat as amelioration. What we have done in your hearing, and in the hearings of the others today, is that we have really tried to almost jury-rig time in getting you into this because we are soon going to be into the Bork hearing.

In fact I just came from meeting with Judge Bork. And if we did not do this hearing today, you could find your nomination possibly being delayed to November or December to get voted on. So I apologize for the delay but it is with your best interest in mind, and trying to get the hearings over so that you can be voted on by the full committee, and hopefully, by the full Senate soon.

Mr. PARKER. Mr. Chairman, I am very appreciative of your including me on the schedule in somewhat of an expedited manner.

Senator LEAHY. You had said in the committee's questionnaire, that you have not had any published legal writings for a number of years, so, really, your legal writing has been what you had filed as an advocate.

Do you view that as an impediment to assuming the duties of a Federal judge?

Mr. PARKER. No, sir. I do not. I think I have written extensively in pleadings, briefs, in the cases that I have handled, and I think that fits well within what I will be doing on the bench, should I be confirmed.

Senator LEAHY. In earlier testimony today, somebody spoke of the joys of a good trial judge and the dismay of one who is not. I have tried an awful lot of cases, and I remember the hollow feeling I would have in my stomach coming before some judges, not because of the case I had but just because they were lousy trial judges, and both sides are hurt by that.

On the other hand, what a joy it is to be able to just worry about trying your case, and not having to worry about giving the judge a legal education at the same time.

What do you think? What are your feelings about what the standout qualities of a good trial judge are?

Mr. PARKER. I think you begin with the matter of fairness, obviously, and I think a good trial judge is a fair judge, but beyond that, a good trial judge is one who creates an appearance of fairness, not merely in his rulings, but in the way he conducts court, avoids ex parte matters, is fair to all litigants and lawyers who appear before him, and shows no impartiality.

Next, I think that a good trial judge shows a good deal of patience, as I would like to compliment this committee on doing today, and I think that is very important to a trial judge.

Another aspect would be decisiveness. That is the duty of the trial court, to make decisions, and to have an orderly progress in the litigation that is tried before the court.

Beyond that, I think another thing may be courtesy to the litigants and the lawyers who appear before the court. The last thing I was going to mention is a good dose of humility, which I think serves us all well.

Senator LEAHY. Do you like trial work?

Mr. PARKER. I sure do.

Senator LEAHY. We do not have Federal guidelines as such for sentencing yet. You have, I am sure, represented people at a sentencing hearing.

What are some of the things that you are going to be thinking about when you have to sentence somebody? I mean, this is assuming that it is before there are any Federal guidelines, specific guidelines set down on sentencing.

Mr. PARKER. I recognize this area of judging as being one of the more difficult. I think in a particular case, you begin, obviously, with the nature of the offense.

Next, I think the background of the individual subject to sentencing, including the family situation, things of the nature of whether the offense was committed under the influence of alcohol or drugs. The prospect of rehabilitation.

The other things that I think are very important are those things that are set forth in the typical presentencing report, and I might say that in New Mexico, we have an excellent probation office that does a very good job on presentencing reports.

The current Federal judges have been very helpful to me in educating me on that process already. Those, I think, are the main things that I would take into consideration.

Senator LEAHY. You have been on various boards in the past. Do you feel that there will be various types of judicial or legal type boards, or panels, that you would still be interested in serving on?

Mr. PARKER. I am not certain of that, and I am very concerned about one in particular which is the board involving my undergraduate alma mater, Rice University. I serve on the fund council, which involves a fund-raising aspect of the university.

I have already asked Lisa Burke, Judge Bratton's senior law clerk, who is present today, to research that issue for me, and if there is any appearance of a conflict or impropriety in that, I will certainly resign from that board, and others, if there is any problem.

Senator LEAHY. But you do see the value, do you not, of judges giving of their time in various types of legal boards where there are no conflicts?

I am thinking, for example, of some judges who go out and lecture at the trial judges seminars. Others help with various types of bar association chores, where there are, obviously, no conflicts.

Mr. PARKER. I am sorry, Mr. Chairman. I think I misunderstood your question. I certainly think, in that area, judges can perform very valuable services, and I would hope to do that.

Senator LEAHY. If you have the kind of affection for an alma mater that most people do, if there is a way that can be worked out, I hope, for your sake, it can. I applaud your concern with it, though, in having somebody do the legal research to raise the question because if there is anybody who falls into the Caesar's wife syndrome in the public today, of course it is a judge, and that you have to be careful with.

I appreciate your being here, and your friends, and I hope now you will at least get a chance to do some sightseeing while you are in Washington.

Mr. PARKER. Thank you very much, Mr. Chairman.

I would like to express my gratitude to President Reagan for nominating me to this position, to Senator Pete V. Dominici for his strong, steadfast support, to Senator Jeff Bingaman for his valuable assistance and to Congressmen Manuel Lujan, Jr. and Joe Skeen for their efforts on my behalf.

Senator LEAHY. I can assure you that it will be my intent to urge the chairman of the full committee to get your nomination before the full committee, on the executive calendar, as quickly as possible.

Mr. PARKER. I appreciate that very much. Thank you.

Senator LEAHY. I think that is it. We stand in recess.

[Whereupon, at 3:35 p.m., the committee was adjourned, subject to the call of the Chair.]

WILLIAM L. STANDISH

Birth:	February 16, 1930	Pittsburgh, Pennsylvania
Legal Residence:	Pennsylvania	
Marital Status:	Married	Marguerite Hillman Oliver 4 children
Education:	1948 - 1953	Yale University B.A. degree
	1953 - 1956	University of Virginia LL.B. degree
Bar:	1957	Pennsylvania
Experience:	1956 - 1980	Reed Smith Shaw & McClay Clerk, 1956-1957 Associate, 1957-1963 Special Partner, 1963-1968 Partner 1968-1980
	1980 - present	Judge, Court of Common Pleas Fifth Judicial District of Pennsylvania
Office:	City-County Building, Rm 626 Pittsburgh, Pennsylvania 15219 412 355-5898	
Home:	626 Pine Road Swickley, Pennsylvania 15143 412 741-4229	

To be United States District Judge for the Western District of Pennsylvania

QUESTIONNAIRE

BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

   William Lloyd Standish

   Name formerly used: William Lloyd Standish, IV

2. Address: List current place of residence and office address(es).

   626 Pine Road
   Sewickley, Pennsylvania 15143

   626 City-County Building
   Pittsburgh, Pennsylvania 15219

3. Date and place of birth.

   February 16, 1930 - Pittsburgh, Pennsylvania

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to Marguerite Hillman Oliver, administrative secretary, The Presbyterian Church, 414 Grant Street, Sewickley, Pennsylvania 15143.

5. Education: List each college and law school you have attended, including dates of attendance, the degrees received, and dates degrees were granted.

   Yale University - September, 1948 to June, 1953 - B.A.
   University of Virginia - September, 1953 to June, 1956 - L.L.B.

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   1956 - 1980 Reed Smith Shaw & McClay - General partner 1968 to 1980; Special partner 1963 to 1968; Associate 1957 to 1963; Clerk 1956 to 1957

   1970 - 1987 Stanover Corporation - director and former president. This is a closely held corporation, no longer actively engaged in business, which, at one time, was a limited partner of a partnership which operated a national hockey league franchise.

   1970 - 1976 H. L. Clement Company - former secretary and director. This was a closely held corporation no longer actively engaged in business which performed various types of specialty construction contracting work.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Judicature Society - sustaining member

American Bar Association - sustaining member
(Member of litigation, antitrust and family law sections)

Pennsylvania Bar Association - sustaining member

Allegheny County Bar Association
(Member of civil litigation and family law sections and of Court Rules Committee)

Academy of Trial Lawyers of Allegheny County
(Governor, 1979-1980)
(Treasurer, 1977-1978)
(Chairman of the Annual Awards Dinner Committee, 1976)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None.

Please list any other organizations to which you belong (such as civic, educational "public interest" law, etc.).

I am, or have been, a member of the following civic, charitable and religious organizations:

Leukemia Society of America, Inc.
National Board of Trustees 1976 to 1980

Leukemia Society of America, Inc., Western Pennsylvania Chapter
Trustee 1970 to 1980
President 1972 to 1975

Mary and Alexander Laughlin Children's Center
Trustee 1972 to present
Treasurer 1972 to 1980

Pittsburgh Presbytery
Permanent Judicial Commission
Member 1982 to 1986

Presbyterian Church of Sewickley
Ruling Elder and Member of Session 1971 to 1977
Clerk of Session May, 1977 to January, 1981 and May, 1982 to May, 1983
Trustee 1957 to 1961; 1963 to 1969 and 1970 to 1971

Rachelwood Foundation
Trustee 1963 to 1977
Vice Chairman 1967 to 1977

Sewickley Cemetery
Corporator 1966 to present
Secretary 1972 to 1980

Sewickley Community Center
Director 1982 to 1983

Staunton Farm Foundation
Member and Director 1984 to present

Western Pennsylvania School for the Deaf
Trustee, 1986 to present

Yale Club of Pittsburgh
President 1977 to 1979
Vice President 1973 to 1975
Secretary 1971 to 1973

Yale University
Association of Yale Alumni
Regional Representative 1978 to 1980

YMCA of Sewickley
Director 1965 to 1973
Secretary 1971 to 1973

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of United States - 1967
Supreme Court of Pennsylvania - 1957
United States Court of Appeals for the Third Circuit - 1960
Superior Court of Pennsylvania - 1958
Commonwealth Court of Pennsylvania - 1970
United States District Court for the Western District of Pennsylvania - 1957
Court of Common Pleas of Allegheny County - 1957

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written. Please supply a copy of any significant speech by you on constitutional law or national policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I was the chairman of a research and drafting group for Antitrust Law Developments, Section of Antitrust Law, American Bar Association (1975).

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. My last physical examination was on March 4, 1987.

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I hold office as Judge, Court of Common Pleas, Fifth Judicial District of Pennsylvania, a Pennsylvania trial court of general jurisdiction. I was appointed by the Governor of Pennsylvania in November, 1979. I was confirmed by the Pennsylvania Senate and took office on April 2, 1980. I was elected in November, 1981, to a ten-year term commencing January 4, 1982.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on

federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

(1) Opinions

Dums' v. Elkcom Co., Inc., et al., Court of Common Pleas of Allegheny County, Pennsylvania, No. GD 84-14356 (Feb. 10, 1987). This was a motion for summary judgment in which it was held, as a matter of law, that defendant, Mosites Construction Company, a general contractor, was immune from common law liability to plaintiff on the ground that plaintiff was its statutory employee under the Pennsylvania Workmen's Compensation Act, 77 P.S. §1 et seq. Plaintiff was alleged to have been employed by a remote subcontractor of the defendant general contractor.

Edwards v. Commonwealth of Pennsylvania, Dep't. of Transportation, et al., 135 P.L.J. 205 (C.P. Alleg.Co. 1987). This was a motion for summary judgment in which it was held, as a matter of law, that defendant, Honeywill & Company, an independent contractor of defendant, PennDOT, was not liable to plaintiff for injuries she sustained in an automobile accident on a highway on which Honeywill had contracted to make repairs not yet undertaken. The opinion discusses the application of the Pennsylvania "Nanty Glo" doctrine as it relates to oral testimony offered in support of summary judgment motions. An appeal is pending to the Superior Court of Pennsylvania.

Hedge v. Allnation Life Ins. Co. of Pa., 134 P.L.J. 295 (C.P.Alleg.Co. 1986). This decided a motion for partial summary judgment and held that plaintiff was not entitled to recover damages for intentional infliction of emotional distress based on an alleged breach of defendant's obligation to make payments under a life insurance policy. An appeal is pending to the Superior Court of Pennsylvania.

Weber v. Weber, 134 P.L.J. 233 (C.P.Alleg.Co. 1986) (Capsule Summary), aff'd, __ Pa. Super. __, __ A.2d __, 483 Pittsburgh 1986 (Feb. 17, 1987). This was a case of first impression in Allegheny County, Pennsylvania, in which the 24 year old sister of a 12 year old child brought an action for partial custody against their own parents who had refused to permit the child to visit with her older sister because the sister was cohabiting with an unmarried man. The parents' motion for summary judgment was granted.

Leon v. Peters Township, et al., 134 P.L.J. 211 (C.P.Alleg.Co. 1986). This was a civil action in which the preliminary objections of defendants Peter Township and Upper St. Clair Township to the complaint of plaintiffs, Lois Steele Leon, et al., were sustained on the ground that these defendants were entitled to governmental immunity within the meaning of the Political Subdivision Tort Claims Act, 42 Pa.C.S. §8541 et seq. An appeal is pending to the Commonwealth Court of Pennsylvania .

Stipetich v. Municipality of Mt. Lebanon, 134 P.L.J. 46 (C.P.Alleg.Co. 1986)(Capsule Summary). This was an equity action in which plaintiff was the assignee of an agreement to make available parking spaces for thirty tenants of plaintiff's assignor residing in designated rental properties. Plaintiff was granted a preliminary injunction to enjoin defendant from exercising control over ten of those parking spaces.

Perkins v. Perkins, 133 P.L.J. 474 (C.P.Alleg.Co. 1985). This is a divorce action in which the defendant husband

moved for summary judgment on the issues of divorce, property distribution and alimony on the ground that a Texas divorce decree had granted him a divorce and adjudicated the parties' marital property rights. The motion was denied on the ground that the Texas decree was not entitled to full faith and credit.

Mullen v. Zayre Corp., 133 P.L.J. 282 (C.P.Alleg.Co. 1985). This was a civil action in which plaintiffs asserted various tort claims against defendants arising out of the alleged detention of certain plaintiffs at the defendant Zayre's store. Summary judgment was granted in favor of defendants as to certain plaintiffs on certain claims, including claims for false imprisonment, negligence, battery, and intentional infliction of emotional distress.

Smith v. Connaught Laboratories, Inc., 133 P.L.J. 119 (C.P.Alleg.Co. 1985). This was a civil action in which a motion for summary judgment was granted in favor of defendant, Allegheny County, on the ground that plaintiffs' claims against it for injuries allegedly sustained by the plaintiff husband as the result of his innoculation with influenza vaccine could not be asserted against the county under the Civil Immunity Act, 42 Pa.C.S.A. §8334, because any rights against the county created by that Act had been impliedly repealed by the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. §8541 et seq.

Miller Electric Construction, Inc., v. Westinghouse Electric Corp., Court of Common Pleas of Allegheny County, Pennsylvania, GD 82-18631 (Aug. 10, 1984), aff'd, Superior Court of Pennsylvania, No. 312 Pittsburgh 1984 and No. 313 Pittsburgh 1984 (May 24, 1985), allocatur denied, Supreme Court of Pennsylvania, No. 397 W.D. Allocatur Docket 1985 (Dec. 13, 1985). This was a motion for post-trial relief from a jury verdict in favor of defendant. Plaintiff, a subcontractor on a construction project, performed work and supplied materials for which it had not been paid by the general contractor, a bankrupt. Plaintiff sought to recover the amount due on its contract from defendant, the owner, based on the claims of fraud, deceit and unjust enrichment.

(2) Reversals

Cross v. Cross, No. 1269 Pittsburgh, 1981. On September 8, 1981, a hearing was held before a hearing officer to determine the parties' alimony pendente lite, counsel fees and child support claims. Both parties filed exceptions and, thereafter, an order was entered requiring the husband to pay alimony pendente lite at the rate of $275.00 per month and the wife to pay child support at the rate of $60.00 per month.

The husband filed a direct appeal to the Superior Court of Pennsylvania. The Superior Court affirmed the award of $275.00 per month alimony pendente lite. However, the court held that it was error to assess an amount for child support without considering the affect of the alimony pendente lite award on the parties' incomes. Accordingly, the order for child support was reversed and the case remanded for reconsideration consistent with the Superior Court opinion.

Thelk v. Thelk, No. 443 Pittsburgh, 1983. This was a divorce action in which the wife appealed from the equitable distribution of marital property. The wife contended that the decree entered erred in not awarding the marital residence in toto to her; in not giving the wife an opportunity, like the husband, to purchase the residence; and in deducting from the payment which the

husband can make to the wife for the residence eight (8%) percent of the value, as costs associated with a sale of a house.

The Superior Court of Pennsylvania found the first two issues to be meritless. However, as to the third issue, the case was remanded for a slight modification of the decree. The court held that rather than automatically deducting eight (8%) percent of the value of the residence as sales costs, the amount deducted should be the actual sales costs involved in the sale of the residence to the husband as sole owner.

Maddle v. Nelkin, et al, No. 184 Pittsburgh, 1983. In this negligence action, plaintiff sought damages for injuries he sustained when he was struck by an automobile operated by defendant Nelkin. Due to head injuries, plaintiff was unable to recall any of the details of the accident. However, at trial, plaintiff produced a witness who, although not an eyewitness, testified as to the weather conditions, the location of plaintiff's truck at the time of the accident and that the accident occurred very suddenly.

During trial, plaintiff submitted points for charge which included a request for an instruction on the presumption of due care. Such requested instruction was refused because of the belief that the purpose of the due care instruction was obviated by the testimony of plaintiff's witness. The jury found plaintiff to be sixty (60%) percent at fault and the verdict was molded in favor of defendants in accordance with the comparative negligence statute.

On appeal, the Superior Court of Pennsylvania vacated the judgment and remanded the case for a new trial on the ground that the testimony of plaintiff's witness, describing the scene prior to the accident, did not assist plaintiff in rebutting the defense of contributory negligence. Accordingly, the court held that plaintiff was entitled to the requested due care instruction.

The Supreme Court of Pennsylvania affirmed the judgment of the Superior Court of Pennsylvania on October 8, 1986. (No. 52 W.D. Appeal Docket, 1985). However, shortly thereafter, the Pennsylvania Supreme Court in Rice v. Shuman, et al, No. 165 E.D. Appeal Docket 1985 (Filed December 16, 1986), ruled that a trial court is under no obligation to instruct a jury on the presumption of due care in cases where a plaintiff or a defendant cannot testify due to death or incapacity. The Supreme Court held that the presumption is outmoded in light of the enactment in Pennsylvania of the comparative negligence standard.

Radford v. Radford, No. 1315 Pittsburgh, 1982. This was a divorce action in which the wife took an appeal to the Superior Court of Pennsylvania from the denial of her exceptions to this court's support order dated January 7, 1982. Pursuant to this order, the wife was to receive support at the rate of $1,700.00 per month from November 25, 1981 to May 25, 1982. On May 25, 1982, the support payment was automatically reduced to $1,000.00 per month because the wife, an information specialist, was expected to secure appropriate employment within that six-month period.

On appeal, the wife asserted that her inability to secure full-time employment constituted a material and substantial change in circumstances which warranted a modification of the support order. The Superior Court of Pennsylvania held that the original award of $1,700.00 per month should have continued for a minimum of one year to enable the wife to create a marketable skill due to her age, the length of time she had been unemployed, her educational training in a limited field

and her good faith effort to secure appropriate employment.

Freshling v. Erie Insurance Company, et al, No. 376 Pittsburgh, 1983. This was a negligence action in which plaintiffs sought damages for injuries sustained in an automobile accident. Plaintiff/husband was driving the motor vehicle which was owned by DuCo Ceramics Company. Plaintiff/wife was a passenger in the vehicle. The automobile was made available by DuCo Ceramics for the personal and business use of the company's president, John Duke. At the time of the accident, plaintiffs, Mr. and Mrs. Duke, and Nellie Maurhoff, were on their way to dinner at the Pittsburgh Athletic Club. Plaintiff/husband, a maintenance employee of DuCo Ceramics, was driving at the request of Mr. Duke who is disabled and never drives an automobile. Plaintiff/husband was not given the use of the automobile by DuCo Ceramics and only operated the automobile at Mr. Duke's request when he was a passenger.

At the time of the accident, two no-fault insurance policies were in effect. The first policy was issued by defendant Erie Insurance Company (Erie) for a vehicle owned by plaintiffs of which plaintiffs were the named insureds. The other policy was issued by defendant State Farm Mutual Insurance Company (State Farm) for vehicles owned by DuCo Ceramics of which the company was the named insured.

The question before the court in determining the liability for coverage as between the two defendants was whether plaintiff/husband was operating a motor vehicle "furnished" by his employer as that word is used in Section 204(a)(1) of the Pennsylvania No-Fault Motor Vehicle Insurance Act, 40 P.S. §1009, 204(a)(1)(Supp. 1983)(the Act). If plaintiff/husband was operating a vehicle "furnished" by his employer, plaintiffs fell within the purview of Section 204(a)(1), and the insurance policy issued by State Farm was the security for their damages. Based on the facts, the court found that plaintiff/husband was not operating a vehicle "furnished" by his employer and, therefore, under Section 204(a)(2) of the Act the applicable security was the insurance policy issued to plaintiffs by Erie.

The court ruled that the security for payment of the basic loss benefits to plaintiffs for their injuries due to the accident was the Erie policy under which the plaintiffs were the named insureds. On appeal, the Superior Court of Pennsylvania reversed the judgment entered against Erie. The court found that plaintiff/husband, the employee, was "furnished" a motor vehicle by his employer on the night of the accident and, therefore, fell within the purview of Section 204(a)(1) of the Act. Accordingly, the State Farm policy was the security for payment of the basic loss benefits to plaintiffs.

Wolk v. Wolk, Nos. 537 & 711 Pittsburgh, 1985. In this divorce action, the wife sought review of two orders which were consolidated on appeal. The first order overruled the wife's exceptions to a divorce decree in which she challenged the procedure used by the court to determine the value of the husband's business interests, the actual value placed on the businesses, the distribution of marital assets and the denial of alimony and counsel fees. The Superior Court of Pennsylvania found no abuse of discretion and affirmed the order.

The second order denied the wife's motion to stay and to open the record to permit admission of alleged after-discovered evidence. The motion was denied because the court decided that it lacked jurisdiction while the case was on appeal pursuant to Pa.R.C.P. 1701(a). The Superior Court of Pennsylvania vacated this order stating, "Although the matter is not clear

and free from doubt, we believe the court erred in denying the motion for lack of jurisdiction." The Superior Court held that the wife's alleged after-discovered evidence would necessarily present questions ancillary to the matters involved in the appeal from the original judgment. Therefore, under Pa.R.C.P. 1701(b)(1), the trial court retained jurisdiction to entertain such a motion despite the pendency of an appeal. Judge Del Sole filed a dissenting memorandum in which he stated that he would affirm the trial court as to both orders.

Henze v. Texaco, Inc., et al. No. 1530 Pittsburgh, 1984. In this negligence action, plaintiff, Virginia Henze, was injured in a fall when she tripped over a threshold which had become loose in the doorway to the office of a Texaco service station operated by defendant, David Rice. A jury apportioned negligence as follows: Mrs. Henze - 35%; Texaco, Inc. - 52%; David Rice - 13%.

The court ruled that it was a jury question as to whether Texaco had exercised control over the station because it had made repairs from time to time. Therefore, the court concluded that the jury's verdict could rest upon a finding that Texaco was in possession of the service station and should have discovered and repaired the loose threshold.

On appeal to the Superior Court of Pennsylvania, Texaco contended: (1) that it was entitled to a judgment n.o.v.; (2) that the trial court erroneously instructed the jury regarding the liability of a "landlord out of possession"; and (3) that the trial court erred in dismissing Texaco's claim for indemnity against Rice.

The Superior Court, stating that they were constrained to disagree with the trial court, held that the mere fact that Texaco occassionally made repairs to the service station did not subject it to liability as a lessor in possession. The case was remanded for a new trial only on the issue of the causative negligence of plaintiff, Virginia Henze, and defendant, David Rice.

Castelluci v. Theophilus, et al. No. 360 Pittsburgh, 1986. The controversy in this case surrounded the purchase of certain coal property by plaintiff, Joseph Castellucci (Castellucci). The complaint asserted claims based on alleged misrepresentations as to the presence of prior strip mining of the property and an alleged conspiracy between the buyer's and seller's attorneys to misrepresent the condition of the property.

In a previous non-jury trial in Beaver County, a verdict was entered in favor of the seller and against Castellucci on the mortgage foreclosure action and on Castellucci's counterclaim for damages from an alleged breach of warranty by the seller.

The defendants moved for summary judgment based on the doctrine of collateral estoppel and the defense of the statute of limitations. The court granted summary judgment in favor of all defendants because the issue of whether Castellucci had knowledge of prior strip mining before he executed the mortgage and note on January 30, 1980 was adjudicated adversely to him in the Beaver County action. Further, the court held that the claims of misrepresentation were barred by the applicable two-year statute of limitations.

On appeal, the Superior Court of Pennsylvania affirmed the order granting summary judgment in favor of the seller and reversed the order granting summary judgment in favor of the buyer's and seller's attorneys. The court stated that they could not say, as a matter of law, that Castellucci's actions against the attorneys were discoverable prior to December 6, 1981, which would have made the action time barred. Further, the Superior Court found that the findings of the trial judge in the

prior adjudication conflicted, and therefore, it was inappropriate to utilize one of the findings to collaterally estop Castellucci's claim.

(3) Opinions Involving Constitutional Issues

See Perkins v. Perkins, 133 P.L.J. 474 (C.P.Alleg.Co. 1985), which is summarized above in the answer to Question 15(1).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I was an unsuccessful candidate for appointment to the Court of Common Pleas of Allegheny County in May, 1976 and May, 1978 and to the United States District Court for the Western District of Pennsylvania in May, 1977.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.

No

2. whether you practiced alone, and if so, the addresses and the dates.

No

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

Reed Smith Shaw & McClay - General partner 1968 to 1980; Special partner 1963 to 1968; Associate 1957 to 1963; Clerk 1956 to 1957

b. 1. What was the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From 1957 until approximately 1963, my practice was divided between civil litigation and trusts and estates work. From 1963 until I became a judge, my practice was devoted, almost entirely, to civil litigation.

2. Describe your typical former clients, and mention the areas, if any, in which you specialized.

My typical clients were business entities in commercial litigation (including products liability, dealer termination, antitrust, contract, insurance and property damage cases), employers in workmen's compensation and Federal Employers Liability Act and seamen's cases, insurance carriers and individuals (both plaintiffs and defendants) in personal injury and wrongful death and survival actions and individuals in family law matters.

c. 1. Did you appear in court frequently, occasionally or not at all? If the frequency of your appearances in

court varied, describe each such variance, giving dates.

I appeared in court regularly.

2. What percentage of these appearances was in

(a) federal courts. 65%
(b) state courts of record. 35%
(c) other courts. 0%

3. What percentage of your litigation was

(a) civil. 100%
(b) criminal. 0%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

1979 - one case as sole counsel; 1978 - one case as sole counsel; 1977 - one case as chief counsel, one as sole counsel; 1976 - five cases as sole counsel (one was ex parte; in another summary judgment was granted); 1975 - none; 1974 - one case as chief counsel; 1973 -one case as chief counsel; 1972 - none; 1971 - one case as sole counsel (these do not include the many cases handled by me which were terminated prior to or during trial or certain other cases in which appeals were taken to appellate courts).

I cannot state specifically how many cases I tried to conclusion before 1971. In 1962 I assisted Edmund K. Trent, Esq., as counsel for defendant in a lengthy antitrust case which was tried to verdict. Also during the 1960's, I tried to verdict, as sole counsel, cases involving personal injuries. In most of these I represented defendants (or their insurance carriers) and employers (under the F.E.L.A.). During the same period, I had an extensive workmen's compensation practice in which I represented employers. Many of those cases were tried to conclusion and, later, appealed to the workmen's compensation board and the courts.

5. What percentage of these trials was

(a) Jury. 50%
(b) Non-jury. 50%

18. Litigation: Describe ten of the most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a) the date of representation;
b) the name of the court and the name of the judge or judges before whom the case was litigated; and
c) the individual name, address and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Griffith v. Wheeling-Pittsburgh Steel Corp. and American Commercial Lines, Inc., 452 F. Supp. 841 (W.D.Pa. 1978), modified in part and vacated and remanded in part with

instructions, 601 F.2d 116 (3d Cir. 1979), cert. granted, judgment vacated and case remanded for further consideration, 451 U.S. 965, 101 S.Ct. 238, 68 L.Ed.2d 343 (1981), judgment reinstated, 657 F.2d 25 (3d Cir. 1981), cert. denied, 456 U.S. 914, 102 S.Ct. 1767, 72 L.Ed.2d 173 (1982). This was an action under the Longshoremen's and Harbor-Workers's Compensation Act amendments of 1972, 33 U.S.C. §905(b) in which I represented defendant Wheeling-Pittsburgh Steel Corporation. The case was tried in the United States District Court for the Western District of Pennsylvania before Judge Teitelbaum who held both defendant Wheeling-Pittsburgh and defendant American Commercial Lines liable to plaintiff in the amount of $209,299.00. On appeal to the Court of Appeals for the Third Circuit, Judges Gibbons, Weis and Higgenbotham affirmed the judgment as to American Commercial Lines but remanded the case for further determination by the district court as to defendant Wheeling-Pittsburgh. A petition for certiorari to the United States Supreme Court was filed by defendant American Commercial Lines and was still pending before the court at the time I was appointed to the bench. The case was one of the early cases involving the rights and duties of longshoremen, their employers and vessel owners under the 1972 amendments to the Act. The case was tried in the district court in October, 1977; the first appeal in which I participated was argued before the court of appeals in June, 1979. I was assisted by my associate Arthur H. Stroyd, Jr., Esq., P. O. Box 2009, Pittsburgh, Pennsylvania 15230 (412-288-3110). Counsel for plaintiff was Thomas L. Cooper, Esq., 808 Grant Building, Pittsburgh, Pennsylvania 15219 (412-391-9770). Counsel for American Commercial Lines were Giles J. Gaca, Esq., and John Wesley Jordan, IV, Esq., Grigsby, Gaca & Davies, P.C., One Gateway Center, 10th Floor, Pittsburgh, PA 15222.

Special Jet Services v. Federal Ins. Co., 83 F.R.D. 596 (W.D.Pa. 1979) rev'd. 642 F.2d 977 (3d Cir. 1980). I represented plaintiff, Special Jet Services, in this declaratory judgment action involving the obligation of defendant, Federal Insurance Company, to provide insurance coverage for plaintiffs against liability in wrongful death and survival actions arising out of the deaths of five passengers of an aircraft operated by plaintiff. The claims asserted against the insured were substantial and the declaratory judgment action involved complex issues of Pennsylvania insurance law. Defendant moved for summary judgment in the United States District Court for the Western District of Pennsylvania, and the motion was granted by Judge Snyder. On appeal, after I had withdrawn from the case to become a judge, the United States Court of Appeals for the Third Circuit reversed, vacated the summary judgment and remanded the case to the district court. The case was ultimately settled after the remand to the district court. During the time I was in charge of the case, I was assisted by my associate Kerry A. Kearney, Esq., P. O. Box

2009, Pittsburgh, Pennsylvania 15230 (412-288-3046). Donald W. Bebenek, Esq., 2000 Frick Building, Pittsburgh, Pennsylvania 15219 (412-261-6600) represented Federal Insurance Company; Robert E. Klein, Esq., 1701 Grant Building, Pittsburgh, Pennsylvania 15219 (412-456-2045) represented plaintiff, T. R. Paul; and Charles R. Taylor, Jr., Esq., 600 Grant Street, 57th Floor, Pittsburgh, Pennsylvania 15219 (412-562-1022) represented plaintiff, Kent Rockwell.

Stack, et al. v. Squibb, et al., Court of Common Pleas of Allegheny County, Pennsylvania, No. GD 77-5944. I represented Eli Lilly Company in this class action in which 29 drug manufacturers and distributors were alleged to be liable to plaintiffs and members of the class they represented for injuries caused by the ingestion by mothers of diethylstilbestrol which, in turn, was claimed to have caused injury to their children. I withdrew as counsel for Eli Lilly Company to become a judge before the case reached the trial stage; however, during the period of my involvement, the case was decertified as a class action and summary judgment was granted in favor of defendants and against some, but not all, plaintiffs. I was assisted by my associate Kerry A. Kearney, Esq., P. O. Box 2009, Pittsburgh, Pennsylvania 15230 (412-288-3046). Counsel for plaintiffs was Thomas L. Cooper, Esq., 808 Grant Building, Pittsburgh, Pennsylvania 15219 (412-391-9770). Among counsel for other defendants were Frederick A. Boehm, Esq., Frick Building, 14th Floor, Pittsburgh, Pennsylvania 15219 (412-281-0587); Frederick N. Egler, Esq., Lawyers Building, 21st Floor, 428 Forbes Avenue, Pittsburgh, Pennsylvania 15219 (412-281-9810); George M. Weis, Esq., 1121 Penn Avenue, Pittsburgh, Pennsylvania 15222 (412-261-1848); John J. McLean, Jr., Esq., U. S. Steel Building, 57th Floor, 600 Grant Street, Pittsburgh, Pennsylvania 15219 (412-562-8961); Robert E. Wayman, Esq., 1624 Frick Building, Pittsburgh, Pennsylvania 15219 (412-566-2970); and Randall J. McConnell, Jr., Esq., 2 P.P.G. Place, Pittsburgh, Pennsylvania 15222 (412-392-5252).

Joe George, Inc. v. Ford Motor Co., et al., United States District Court for the Western District of Pennsylvania, Civil Action No. 74-1277. I represented Ford Motor Company in this automobile dealer termination case before Judge Diamond and a jury. The case arose under the Automobile Dealer Day In Court Act, 15 U.S.C. §1221 et seq. It involved damages allegedly sustained by plaintiff, a Mercury dealer, as a result of the termination of its franchise. The case settled, after several days, during the course of the trial. I was assisted by my partner, Robert W. Watson, Jr., Esq., One Mellon Bank Center, 500 Grant Street, 29th Floor, Pittsburgh, Pennsylvania 15219 (412-562-8718). Plaintiff was represented by Frank Coho, Esq., 1117 Grant Building, Pittsburgh, Pennsylvania 15219 (412-261-3560).

Stowe Township v. Standard Life Ins. Co. of Indiana, 372 F.Supp. 433 (W.D.Pa. 1974), rev'd, 507 F.2d 1332 (3d Cir. 1975). This was

an action arising out of the termination of a group annuity contract in which I represented Standard Life Insurance Company of Indiana. Plaintiff sought to require defendant to pay plaintiff the cash value of annuities which defendant had agreed to issue upon the retirement of plaintiff's employees. After a non-jury trial in October, 1973, the United States District Court for the Western District of Pennsylvania entered judgment for plaintiff in the amount of $210,446.46. The judgment was reversed by the United States Court of Appeals for the Third Circuit, and judgment was directed to be entered for defendant. The case was significant not only in that it involved a substantial money judgment, but in that the contract involved was one of many of a similar type in effect in Pennsylvania between the defendant and other municipalities. The action was tried in the district court before Judge Snyder and was argued in the court of appeals before Judges Aldisert, Adams and Hunter. Counsel for plaintiff was Melvin Schwartz, Esq., Baskin, Flaherty, Elliott, Mannino & Schwartz, Royal Palm Boulevard, No. III, 2nd Floor, 1600 S. Dixie Highway, Boca Raton, Florida 33432 (305-391-7271). Co-counsel for plaintiff was William A. Johnson, Esq., 96 North Main Street, Washington, Pennsylvania 15301 (412-225-8460). Associated with me were my partner, William H. Powderly III, Esq., P. O. Box 2009, Pittsburgh, Pennsylvania 15230 (412-288-3246) and my associate, Alan G. Keith, Esq. (address unknown).

Schenk, et al. v. Piper Aircraft Corp., 377 F. Supp. 477 (W.D. Pa. 1974) aff'd, 521 F.2d 1399 (3d Cir. 1975). This was a products liability case arising out of the death of three passengers who were killed in the crash of a Piper Aircraft. Judge Weber for the United States District Court for the Western District of Pennsylvania granted summary judgment in favor of defendant which was affirmed by the Court of Appeals for the Third Circuit. The significant issue in the case was the Pennsylvania conflict of laws question which, at that time, had not been settled by the Pennsylvania appellate courts. Counsel for plaintiffs were Robert L. Summers, Esq., 336 South High Street, Columbus, Ohio 43215 (614-224-2993). Local counsel for plaintiffs was David J. Herrod, Esq., 1010 Grant Building, Pittsburgh, Pennsylvania 15219-2294 (412-261-6400). Associated with me was Johanna G. O'Loughlin, Esq., General Counsel, Fisher Scientific, 711 Forbes Avenue, Pittsburgh, Pennsylvania 15219 (412-562-8300). The appeal was decided on briefs and not argued before the court of appeals.

Bordas, et ux. v. Ford Leasing Dev. Corp., et al., Court of Common Pleas of Allegheny County, Pennsylvania, No. GD 75-22727 and 1479 January Term 1974. I represented Ford Leasing Development Corporation in this riparian rights case in which a landowner asserted claims against other owners of land on a waterway above and below the land owned by plaintiffs. Plaintiffs sought equitable relief against the defendant landowners, including the owner of a shopping center, and

our client, the owner of land on which an automobile dealership was located, for alleged interference with water flow rights. At the conclusion of plaintiffs' case before Judge Finkelhor, sitting without a jury, Ford Leasing Development Corporation was granted a compulsory non-suit. I was assisted by my associate Kerry A. Kearney, Esq., P. O. Box 2009, Pittsburgh, Pennsylvania 15230 (412-288-3046). Counsel for plaintiffs was John A. Metz., Jr., Esq., (now deceased) and Jon L. Friedman, Esq., 718 Fifth Avenue, Pittsburgh, Pennsylvania 15222. Other defendants were represented by James F. Manley, Esq., 404 Law and Finance Building, Pittsburgh, Pennsylvania 15219 (412-261-2755); Henry E. Rea, Jr., Esq., 3131 U. S. Steel Building, Pittsburgh, Pennsylvania 15222 (412-255-6500); George I. Minch, Esq. P. O. Box 1093, Coraopolis, Pennsylvania 15108 (412-269-0770).

Hinkle v. H.J. Heinz Co., 7 Pa. Cmwlth. 216, 298 A.2d 632 (1972), rev'd, 462 Pa. 111, 337 A.2d 907 (1975). This was an appeal from an order of the Pennsylvania Workmen's Compensation Board dismissing claimant's petition for compensation for partial loss of hearing due to exposure to noise in the course of his employment. It was a leading case on this issue under the Workmen's Compensation Act in effect prior to its amendment in 1972. The appeal was first argued before Judge Lenchner of the Court of Common Pleas of Allegheny County who entered an order affirming the action of the Board. An appeal was taken to Commonwealth Court and argued before Judges Kramer, Rogers and Blatt. Commonwealth Court affirmed the Court of Common Pleas. On allocatur to the Supreme Court of Pennsylvania, the Supreme Court reversed the order of the Commonwealth Court and remanded the case to the workmen's compensation authorities. Counsel for claimant was Lloyd F. Engle, Jr., Esq., 1307 Manor Building, 564 Forbes Avenue, Pittsburgh, Pennsylvania 15219 (412-281-4555). I was assisted in the preparation of the brief in the Commonwealth Court by my former associate, Kathleen A. Merry (now Kathleen Merry Mills), 2086 Martin Tower, Bethlehem, Pennsylvania 18016 (215-694-6750). In connection with the brief for the Pennsylvania Supreme Court I was assisted by my associate, James J. Restivo, Jr., Esq., P.O. Box 2009, Pittsburgh, Pennsylvania 15230 (412-288-3122).

Carter v. Union R.R. Co., et al., 438 F.2d 208 (3d Cir. 1971). This was a Federal Employers Liability Act case in which I represented defendants, Union Railroad Company and General Motors Corporation. The case was tried in the United States District Court for the Western District of Pennsylvania in 1970 before Judge Dumbauld and a jury. A verdict in favor of defendant Union Railroad Company was directed by the judge at the conclusion of all the evidence. An appeal was argued before Judges Hastie and McLaughlin of the Court of Appeals for the Third Circuit. The court of appeals reversed and remanded the case for new trial in the district court where it was ultimately settled. The case became a leading case on the question of scope of employment

under the Federal Employers Liability Act. Plaintiff's counsel was Paul F. Laughlin, Esq., 140 Ft. Pitt Commons Building, Pittsburgh, Pennsylvania 15219 (412-355-0770). My partner, Thomas R. Wright, Esq., assisted me in the preparation of the brief submitted to the court of appeals. His address is P. O. Box 2009, Pittsburgh, Pennsylvania 15230 (412-288-3270).

Commonwealth of Pennsylvania, Dep't. of Ins. v. United Republic Life Ins. Co., et al., Commonwealth Court of Pennsylvania, No. 289 Cmwlth Docket 1970. This was a proceeding before the Pennsylvania Department of Insurance to impose sanctions on the defendant life insurance company for alleged violations of Department of Insurance regulations by the company and its agents in connection with solicitations for the sale of life insurance policies. It was significant in that the Department of Insurance sought to impose very severe sanctions which could have materially affected the defendant company's ability to continue to do business. Thirty-four separate charges were involved. Evidence was offered as to seventeen of the charges in eleven days of testimony. It was heard by Hearing Examiner David Swanetz (present whereabouts unknown). The case was tried during 1970. An appeal was taken to Commonwealth Court from the order subsequently entered by the Commissioner of Insurance. The matter was ultimately settled shortly before the scheduled argument of the appeal. Counsel for the Pennsylvania Department of Insurance was D. T. Spagnoletti, Esq. (present whereabouts unknown). Associated with me in connection with the case was Thomas R. Balaban, Esq. (now deceased). I was also assisted by my associate, Kathleen A. Merry (now Kathleen Merry Mills), 2086 Martin Tower, Bethlehem, Pennsylvania 18016 (215-694-6750).

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

A. Air Tool Maintenance Co., Inc., et al., vs. Port Authority of Allegheny County, et al., GD 82-5975. I presided over the pretrial and trial proceedings in this tort action which arose out of a bus accident in which over twenty passengers were injured, one fatally. Extensive property damage resulted from the collision between the bus and a building. Numerous civil actions were filed against the transportation authority and the manufacturer of the bus which were consolidated for pretrial and trial purposes. In October, 1985, the remaining 11 consolidated actions were tried on the issue of liability. The trial lasted seven weeks and resulted in a jury verdict in favor of plaintiffs and against both the transportation authority and the bus manufacturer. Following the verdict, the individual cases were severed, and, ultimately, all were settled after extensive negotiations.

B. James N. Steedle, et ux. vs. Richard C. Nolte, et ux., Home & Home Leisure Products, Inc., and Pool City, Inc., vs. Pool City, GD 80-26748. This was a products

liability case, assigned to me as a complex [illegible] pretrial supervision and trial. The case involved injuries, resulting in quadriplegia, sustained by plaintiff James W. Steedle when he dove [illegible] ve-ground swimming pool. He brought an action against the owners of the pool, the seller of the pool and the manufacturer of its major components, claiming that the defendants were negligent and that the pool was defectively designed. The case came on for jury trial in January, 1987, and was settled after almost four weeks of trial.

C. In the late 1970's I represented U.S. Aviation Underwriters in a number of aircraft accident cases, including a case which was still pending at the time I left my law firm to become a judge. This case involved a helicopter accident in which a helicopter descended into a holiday picnic gathering, injuring approximately 18 people, some fatally.

D. In the late 1970's, I also represented Ford Motor Company and Ford Motor Credit Company in a number of significant cases, including a case involving the $10,000,000.00 financing of an apartment building in Towson, Maryland, and a case involving the sale of a strip mill at Ford Motor Company's Rouge Plant in Dearborn, Michigan.

E. Since April, 1980, I have been one of four judges assigned to the family division of the Court of Common Pleas of Allegheny County. During the period of my service, Pennsylvania enacted a new divorce code which, for the first time, provided for equitable distribution of marital property. During the early 1980's, the decisions made by the judges of the family division were made without the benefit of appellate court precedents. In 1979, the family division disposed of 13,822 cases and received and disbursed $22,532,679.00 in support monies. Since 1980, the family division, through the implementation of innovative procedures such as the use of attorneys employed as full-time hearing officers, and the development of a computer system, has enabled itself to accommodate an ever-increasing case load. For example, in 1986, the family division had 22,441 case dispositions, and through its collection and disbursement office, collected over $51,000,000.00 in spousal and child support payments.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Describe all financial arrangements, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.

Mellon Bank, N.A., Trustee of the Reed Smith Shaw & McClay Retirement and Pension Trust -- deferred vested joint and survivor benefit of $138.75 per month commencing at age 65.

Mellon Bank, N.A., Trustee of the Reed Smith Shaw & McClay Self-Employed Money Purchase Retirement Trust -- fully vested separate account in this HR-10 plan; value at February 28, 1987 was $176,045.96.

Commonwealth of Pennsylvania -- Value at 12/31/86 was $22,514.89. (the balance will be refunded if I cease to be employed by the Commonwealth before April 1990).

The Presbyterian Church - My wife is entitled to an annuity beginning at age 65.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would recuse myself from participation in any case in which I became aware of a conflict of interest, financial or otherwise, and would keep adequate records to determine the existence of any such conflict. Furthermore, I will comply with all applicable American Bar Association and Judicial Conference guidelines in this connection.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

From approximately March to November, 1971 I was the treasurer for the campaign committee of Robert N. Pierce, Jr., who was a candidate for the Clerk of Courts of Allegheny County, Pennsylvania. From approximately March to November, 1977, I was the treasurer for the campaign committee of William H. Colbert, a candidate for judge of the Court of Common Pleas of Allegheny County, Pennsylvania. From approximately February to November, 1981, I was a candidate for the office of judge of the Court of Common Pleas of Allegheny County, Pennsylvania.

5. If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?

Not applicable.

6. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

See attached financial statement and schedules

III. GENERAL (PUBLIC)

1. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

It would be my obligation as a United States District Judge to interpret the Constitution of the United States, the enactments of Congress and state laws in accordance with the precedents established by the Supreme Court of the United States and the United States Circuit Courts of Appeal, particularly the United States Court of Appeals for the Third Circuit. To the extent that these precedents have established broader substantive rights or looser jurisdictional requirements, a district judge is required to follow them. In the application of such precedents in individual cases, particularly in those cases involving possible judicial encroachment on the functioning of other independent branches of government, a district court should use restraint to limit judicial intervention to the greatest extent possible without sacrificing the integrity of the court's decision making process. Such restraint includes limiting the issues to be decided to those controversies actually existing among the parties before the court and fashioning the most limited remedies appropriate to the case to avoid the unnecessary involvement of the court in ongoing management or oversight responsibilities. A judge should not use the power of the court to impose his or her own personal views or prejudices or predilections in the resolution of cases.

2. What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.

During the 1960's I represented a number of criminal defendants in cases in the state and federal courts. One of these cases was the subject of an appeal to the Supreme Court of Pennsylvania: Commonwealth ex rel. Crist v. Price, 405 Pa. 384, 175 A.2d 852 (1961). During the 1970's I represented indigent defendants in relatively few cases; however, during that period I was extensively involved in many civic and charitable

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organizations. (See answer to Question No. 10, page 3.)

A great many cases before the family division of the Court of Common Pleas of Allegheny County are cases in which one or more parties are unrepresented by counsel. In those cases, the judges and other personnel of the family division are particularly careful to be certain that no unrepresented party is disadvantaged by his or her lack of representation. With respect to support actions involving paternity claims, I was able, during the early 1980's to make arrangements with various law firms in the Pittsburgh area to have associates of the firms represent indigent mothers in the presentation of their cases at trial, particularly jury trials. These arrangements are still in place today and associates of those firms are regularly appointed by the judges to represent such indigent mothers. Finally, in custody cases where a special need appears to exist, I appoint attorneys to act as child advocates for the children whose custody is at issue.

WILLIAM L. STANDISH

Assets

Dollar Bank - Account #0904001984	6,877	
Mellon Bank - Account #252-9389	24,893	
Mellon Bank - Account #441-2900	3,221	
Mellon Bank - Account #339-2396 (joint acct)	32,510	67,501
Securities - per Union National Bank statement attached (Ex. A)		
Common stocks	1,401,052	
Preferred stocks	3,000	
U S Treasury Notes	158,152	
Federated Trust for short-term U S Government securities	45,200	
Limited Partnerships	554,314	
*Stanover Associates	16,321	2,178,039
Thomson McKinnon Commodity Account		3,092
Real Estate - Assessed Market Value		
Sewickley Residence	191,200	
Canterbury Lane	15,600	
Canterbury Lane	11,400	
¼ interest Persimmon Road	24,000	
¼ interest Persimmon Road	20,000	
¼ interest Fern Hollow Road	14,160	276,360
Automobiles (3 at estimated value)		15,000
Fine Arts and Furniture (at insured value)		111,410
Personal Effects (at estimated value)		25,000
Boats (at estimated value)		8,000
Computer Equipment (at estimated value)		2,000
Notes Receivable		6,500
		2,692,902

*Stanover Associates is not listed on Union National Bank statement.

WILLIAM L. STANDISH

Liabilities

Notes Payable to others:	
Partnerships	164,872
Estimated Taxes due 1987	38,213
Total Liabilities	203,085
Net Worth	2,489,817
Total Liabilities & Net Worth	2,692,902

NOTE: Does not include charitable contributions pledged or accounts payable in 30 days or less.

MARGUERITE O. STANDISH

Assets

Securities - per Mitchell Sinkler & Starr statement attached (Ex. B)		
Common stock	2,000,988	
Short term reserves - Tempfund	31,000	
U S Treasury Notes	68,197	
Limited Partnerships	35,177	2,135,362
Real Estate - Assessed Market Value		
318 Hill Street	52,000	
¼ interest 422 Beaver Street	27,400	79,400
Personal Effects (at estimated value)		10,000
		2,224,762

Liabilities

Notes Payable to other:	
Partnerships	35,806
Net Worth	2,188,956
Total Liabilities & Net Worth	2,224,762

NOTE: Does not include accounts payable in 30 days or less.

JAMES H. STANDISH

Assets

Mellon bank - Account #705-9056		4,121
Securities - per Union National Bank statement attached (Ex. C)		
Common stock	447,950	
Federated Trust for short-term U S Government securities	22,900	
Principal cash	59	470,909
Automobile		
VW Van (at estimated value)		10,000
		485,030

Liabilities

NOTE: The only liabilities are accounts payable in 30 days or less.

CONSTANCE S. STANDISH

Assets

First Virginia Bank - Southwest Account #6416-5973	1,116	
Dollar Bank Account #0906475074	12,987	14,103
Securities - per Union National Bank (Ex. D) and Pittsburgh National Bank (Ex. E) statements attached.		
Short Term Inv Fund Personal	76,441	
Common stock	354,508	
U S Treasury Notes	20,869	
Federated Trust for short-term U S Government securities	1,700	
Principal cash	1,505	455,023
		469,126

Liabilities

NOTE: The only liabilities are accounts payable in 30 days or less.

STATEMENT

TRUST DEPARTMENT

Union National Bank

STATEMENT OF INVESTMENT POSITION
AS OF 02/17/87

ACCOUNT NUMBER 60-4077-00-8
WILLIAM L STANDISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF *ASSET CATEGORY* AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
	* EQUITIES *							
	COMMON STOCKS							
2,000	ANDREW CORP CON	2.61	$53,544.93 26.77	$36,500.00 18.25	1.69			
700	CULLINET SOFTWARE INC CON	.56	13,288.37 18.98	7,787.50 11.12	.36			
600	R R DONNELLEY & SONS CO CON	3.03	37,130.37 61.88	42,450.00 70.75	1.96	1.40	840.00	1.98
1,300	EXXON CORP CON	7.72	4,129.06 3.17	108,225.00 83.25	5.01	3.60	4,680.00	4.32
950	HEWLETT-PACKARD CO COM	3.60	44,958.13 47.32	50,468.75 53.12	2.33	.22	209.00	.41
4,058	INTERNATIONAL BUSINESS MACHINES CORP CON	38.81	16,358.42 4.03	543,772.00 134.00	25.15	4.40	17,855.20	3.28

EXHIBIT A

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STATEMENT

TRUST
DEPARTM

Union National Bank

STATEMENT OF INVESTMENT POSITION
AS OF 02/17/87

ACCOUNT NUMBER 60-4877-00-8
WILLIAM L STANDISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF "ASSET CATEGORY" AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
2,604	MERCK & CO INC COM	24.84	44,425.71 17.06	347,959.50 133.62	16.10	2.20	5,728.80	1.65
1,500	METROMAIL CORP COM	2.64	28,992.32 19.32	36,937.50 24.62	1.71			
2,000	SHARED MEDICAL SYSTEMS CORP COM	7.03	12,625.00 6.31	98,500.00 49.25	4.56	.72	1,440.00	1.46
430	SOUTHLAND CORP COM	1.61	22,848.94 53.13	22,575.00 52.50	1.04	1.12	481.60	2.13
2,600	SUPER VALU STORES COM	4.66	40,225.68 15.47	65,325.00 25.12	3.02	.42	1,092.00	1.67
1,300	AERONAUTS INTERNATIONAL AIR INC COM	.71	10,000.00 7.69	9,999.60 7.69	.46			
75	BJW INC COM	2.18	30,549.10 407.32	30,549.10 407.32	1.41			

STATEMENT

Union National Bank

TRUST DEPARTM

STATEMENT OF INVESTMENT POSITION
AS OF 02/17/87

ACCOUNT NUMBER 60-4077-00-8
WILLIAM L STANDISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF *ASSET CATEGORY* AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
583	H L CLEMENT CO COM		1.00	1.00				
25,000	SARANAC RECREATION INC CLASS A COM		1.00	1.00				
5,210	STANOVER CORP COM		1.00	1.00				
	TOTAL COMMON STOCKS	100.00	$359,075.03	$1,401,051.95	64.80		$32,326.60	2.31
	* TOTAL EQUITIES *	100.00	$359,075.03	$1,401,051.95	64.80		$32,326.60	2.31
	* CONVERTIBLE SECURITIES *							
	PREFERRED STOCKS							
30	IPAC GROUP INC SER A CONV PFD	100.00	$3,000.00 100.00	$3,000.00 100.00	.14			

STATEMENT

TRUST
DEPARTMI

Union National Bank

STATEMENT OF INVESTMENT POSITION
AS OF 02/17/87

ACCOUNT NUMBER 60-4077-00-8
WILLIAM L STANDISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF *ASSET CATEGORY* AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
	* FIXED INCOME SECURITIES *							
	GOVERNMENT OBLIGATIONS							
	TREASURY & FEDERAL AGENCIES							
50,000	U S TREAS NOTES 6.875% DTD 5-15-86 DUE 5-15-89	100.00	$50,484.38 100.96	$50,265.50 100.53	2.33	.06875	$3,437.50	6.84
	* MISCELLANEOUS ASSETS *							
	6 PARTICIPATIONS REPRESENTING 3 UNITS IN SB PARTNERS, A NEW YORK LIMITED PARTNERSHIP	7.15	$39,648.00	$39,648.00	1.83			
	ONE UNIT REPRESENTING LIMITED PARTNERSHIP INT IN ONE ATLANTA ASSOCIATES	29.06	161,070.00	161,070.00	7.45			

STATEMENT

Union National Bank

TRUST DEPARTM

STATEMENT OF INVESTMENT POSITION
AS OF 02/17/87

ACCOUNT NUMBER 60-4077-00-6
WILLIAM L STANDISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF *ASSET CATEGORY* AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
	ONE UNIT REPRESENTING LIMITED PARTNERSHIP INTEREST IN J & S REALTY ASSOCIATES	24.05	133,306.00	133,306.00	6.17			
	ONE AND ONE HALF UNITS REPRESENTING LIMITED PARTNERSHIP INTEREST IN LOS ANGELES GATEWAY LIMITED PARTNERSHIP	10.10	55,999.50	55,999.50	2.59			
	ONE UNIT REPRESENTING LIMITED PARTNERSHIP IN ONE FINANCIAL PLACE	23.29	129,090.00	129,090.00	5.97			
1,400	LIMITED PARTNERSHIP INTEREST IN WINTHROP FINANCIAL ASSOCIATES	6.35	35,200.00 25.00	35,200.00 25.00	1.63			
	* TOTAL MISCELLANEOUS ASSETS *	100.00	$554,313.50	$554,313.50	25.64			
	* CASH AND EQUIVALENTS *							
50,000	U S TREAS NOTES 12.375% DTD 1-5-81 DUE 1-15-88	34.12	$50,000.00 100.00	$52,234.00 104.46	2.42	.1237%	$6,187.50	11.85

STATEMENT

TRUST DEPARTMENT

Union National Bank

STATEMENT OF INVESTMENT POSITION
AS OF 02/17/87

ACCOUNT NUMBER 60-4077-00-8
WILLIAM L STANDISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF *ASSET CATEGORY* AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
55,000	U S TREAS NOTES 8.875% DTD 7-31-85 DUE 7-31-87	36.35	54,914.06 99.84	55,652.85 101.18	2.57	.08875	4,881.25	8.77
45,200	FEDERATED TRUST FOR SHORT-TERM U. S. GOVERNMENT SECURITIES	29.52	45,200.00	45,200.00	2.09	.05317	2,403.28	5.32
	PRINCIPAL CASH	.01	11.97	11.97	.01			
	* TOTAL CASH AND EQUIVALENTS *	100.00	$150,126.03	$153,098.82	7.09		$13,472.03	8.80
	** TOTAL ASSETS **		$1,116,998.94	$2,161,729.77	100.00		$49,236.13	2.28

*ALL PRICES AS OF STATEMENT DATE UNLESS OTHERWISE INDICATED

MITCHELL SINKLER & STARR

PRINCIPAL PORTFOLIO

ACCOUNT NO. 7370 ACCOUNT M/S MARGUERITE O STANBISH DATE 3/31/87 PAGE NO. 1

SHARES/ PAR VALUE	DESCRIPTION	TAX COST	MARKET UNIT	MARKET TOTAL	% OF ACCOUNT AT MKT	PROJ. ANN. INCOME	% OF CURRENT YIELD
	SHORT TERM RESERVES						
11000	TEMPLETON PROVIDENT NATIONAL BANK	11000.00	100.00	11000.00	0.32	652	5.93
20000	TEMPLETON PROVIDENT NATIONAL BANK	20000.00	100.00	20000.00	0.94	1186	5.93
	TOTAL SHORT TERM RESERVES	31000.00		31000.00	1.45	1838	5.93
	GOVERNMENT AND AGENCIES						
25000	U S TREASURY NOTES 9.25% 8/15/88	24997.69	101.94	25494.25	1.19	2063	8.10
20000	U S TREASURY NOTES 9.25% 8/15/89	20323.75	105.09	21018.80	0.98	1850	8.80
20000	U S TREASURY NOTES 9.625% 11/15/90	20405.00	108.47	21693.60	1.02	1925	8.87
	TOTAL GOVERNMENT AND AGENCIES	65668.44		68196.65	3.19	5838	8.56
	COMMON STOCK						
	PAPER						
300	KIMBERLY-CLARK CORP	29635.94	112.79	90200.00	4.22	2304	2.55
	TOTAL PAPER	29635.94		90200.00	4.22	2304	2.55
	ELECTRICAL EQUIPMENT						
2000	TRIPACO CORP	61600.00	37.50	75000.00	3.51	1400	1.87
700	EMERSON ELECTRIC	47096.00	104.00	72800.00	3.41	2016	2.77
	TOTAL ELECTRICAL EQUIPMENT	108696.00		147800.00	6.92	3416	2.31
	PUBLISHING						
700	ARMSTRONG PUBLICATIONS INC	36146.00	44.68	31812.50	1.47	224	0.71
1200	DONNELLEY R.R. & SONS	73606.00	73.75	88500.00	4.14	1680	1.90

EXHIBIT B

MITCHELL SINDLER & STARK

PRINCIPAL PORTFOLIO

ACCOUNT NO. 7370 ACCOUNT MRS MARGUERITE B STANBISH DATE 3/31/87 PAGE NO. 2

SHARES/ PAR VALUE	DESCRIPTION	TAX COST	MARKET UNIT	MARKET TOTAL	% OF ACCOUNT AT MKT	PROJ. ANN. INCOME	% OF CURRENT YIELD
	TOTAL PUBLISHING	107992.00		119912.50	9.62	1904	1.59
	FOODS						
2400	QUAKER OATS CO	91525.50	46.75	121550.00	9.69	2088	1.71
	RETAIL STORES						
3600	SUPER VALU STORES	52968.00	28.25	101790.00	8.16	1512	1.49
	CONSUMER DIVERSIFIED						
1500	PROCTER & GAMBLE	87971.00	92.00	138000.00	6.66	4050	2.93
	DRUGS						
1200	LILLY (ELI) & CO	37926.03	91.50	109800.00	5.14	2400	2.19
800	[illegible] & CO	25165.32	154.63	123700.00	5.79	1760	1.42
	TOTAL DRUGS	63069.35		233500.00	10.93	4160	1.78
	HOSPITAL SUPPLIES						
1200	JOHNSON & JOHNSON	28338.54	88.50	106200.00	4.97	1650	1.58
	ELECTRONICS						
4700	HEWLETT PACKARD	129763.34	56.88	267312.50	12.52	1034	0.39

MITCHELL SINKLER & STARR

PRINCIPAL PORTFOLIO

ACCOUNT NO. 7770 ACCOUNT MRS MARGUERITE T STANDISH DATE 3/31/87 PAGE NO. 3

SHARES/ PAR VALUE	DESCRIPTION	TAX COST	MARKET UNIT	MARKET TOTAL	% OF ACCOUNT AT MKT	PROJ. ANN. INCOME	% OF CURRENT YIELD
	OFFICE EQUIPMENT						
500	INTERNATIONAL BUSINESS MACHINES	25451.67	150.13	75062.50	3.52	2200	2.93
	RAILROADS						
1100	UNION PACIFIC	19010.05	75.00	82500.00	3.86	2200	2.67
	MULTILINE COMPANY						
500	MINNESOTA MINING & MFG	63327.50	129.38	64687.50	3.03	1860	2.88
	SERVICES						
750	DUN & BRADSTREET	81952.50	127.75	95812.50	4.49	1920	2.00
	OTHER						
1000	IMS INTERNATIONAL	28875.00	28.75	28750.00	1.35	160	0.56
	SPECIALTY TECHNOLOGY						
2000	PALL CORP	38493.00	33.38	66750.00	3.13	680	1.02
	MEDICAL SERVICES						
2000	SHARED MEDICAL SYSTEMS	13038.12	34.75	69500.00	3.25	1440	2.07

MITCHELL SANDLER & STARR

PRINCIPAL PORTFOLIO

ACCOUNT NO. T370 ACCOUNT MRS MARGUERITE T STANDISH DATE 3/31/87 PAGE NO. 4

SHARES/ PAR VALUE	DESCRIPTION	TAX COST	MARKET UNIT	MARKET TOTAL	% OF ACCOUNT AT MKT	PROJ. ANN. INCOME	% OF CURRENT YIELD
	BIOTECHNOLOGY						
3000	GENENTECH INC	14875.00	57.25	171750.00	8.04	0	0.00
	TOTAL COMMON STOCK	967042.31		1950987.50	92.77	12600	1.45
	MISCELLANEOUS						
50	BJW INC	20434.27	400.00	20000.00	0.94	0	0.00
26766	FALCONER LAND CO	26765.71	0.00	0.00	0.00	0	0.00
1	J C S REALTY ASSOCIATES	88730.53	24852.50	24852.50	1.16	0	0.00
413	WINTHROP FINANCIAL ASSOC LTD PTNR	10325.00	25.00	10325.00	0.48	0	0.00
	TOTAL MISCELLANEOUS	146275.48		55177.50	2.58	0	0.00
	PRINCIPAL C INV. INC. CASH	834.94		834.94			
	TOTAL ACCOUNT	1190661.17		2136196.79	100.00	40276	1.89
	INCOME CASH	0.00					

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Union National Bank

STATEMENT OF INVESTMENT POSITION
AS OF 04/20/67

ACCOUNT NUMBER 81-2569-00-9
JAMES HILLMAN STANDISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF *ASSET CATEGORY* AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
	* EQUITIES *							
	COMMON STOCKS							
600	R R DONNELLEY & SONS CO COM	9.64	$57,789.00 63.97	$45,200.00 72.00	9.17	1.40	$840.00	1.94
500	EMERSON ELECTRIC CO COM	11.39	20,654.52 41.30	51,000.00 102.00	10.83	2.88	1,440.00	2.82
200	INTERNATIONAL BUSINESS MACHINES CORP COM	6.74	22,775.00 113.87	30,175.00 150.87	6.41	4.40	880.00	2.92
350	MERCK & CO INC COM	12.19	39,935.00 114.10	54,600.00 156.00	11.59	2.20	770.00	1.41
300	MINNESOTA MINING & MFG CO COM	8.67	34,980.00 116.60	37,950.00 126.50	8.06	3.72	1,116.00	2.94
500	POLAROID CORP COM	7.77	744.30 1.48	34,812.50 69.62	7.39	1.80	900.00	1.44

EXHIBIT C

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Union National Bank

STATEMENT OF INVESTMENT POSITION
AS OF 04/20/87

ACCOUNT NUMBER N1-2569-00-5
JAMES NILLMAN STANDISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF *ASSET CATEGORY* AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
500	PROCTER & GAMBLE CO COM	9.89	35,467.50 70.93	44,125.00 88.25	9.37	2.70	1,350.00	3.06
1,600	RUBBERMAID INC COM	9.82	18,940.00 11.83	44,000.00 27.50	9.34	.28	448.00	1.02
500	SHARED MEDICAL SYSTEMS CORP COM	3.31	3,441.56 6.88	14,812.50 29.62	3.15	.72	360.00	2.43
600	SOUTHLAND CORP COM	6.51	32,685.00 54.47	29,175.00 48.62	6.20	1.12	672.00	2.30
1,400	SUPER VALU STORES COM	7.89	21,563.50 15.40	35,350.00 25.25	7.51	.42	588.00	1.66
400	UNION PACIFIC CORP COM	6.42	19,832.00 49.58	28,750.00 71.87	6.11	2.00	600.00	2.78
	TOTAL COMMON STOCKS	100.00	$288,803.36	$447,950.00	95.13		$9,764.00	2.18
	* TOTAL EQUITIES *	100.00	$288,803.36	$447,950.00	95.13		$9,764.00	2.18

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Union National Bank

STATEMENT OF INVESTMENT POSITION
AS OF 04/20/87

ACCOUNT NUMBER 81-2569-00-5
JAMES HILLMAN STAMBISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF *ASSET CATEGORY* AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
	* CASH AND EQUIVALENTS *							
22,900	FEDERATED TRUST FOR SHORT-TERM U. S. GOVERNMENT SECURITIES	99.74	$22,900.00	$22,900.00	4.86	.05090	$1,165.61	5.09
	PRINCIPAL CASH	.26	59.40	59.40	.01			
	* TOTAL CASH AND EQUIVALENTS *	100.00	$22,959.40	$22,959.40	4.87		$1,165.61	5.08
	** TOTAL ASSETS **		$311,762.76	$470,909.40	100.00		$10,929.61	2.32

*ALL PRICES AS OF STATEMENT DATE UNLESS OTHERWISE INDICATED

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DEPARTMENT

Union National Bank

STATEMENT OF INVESTMENT POSITION
AS OF 04/20/87

ACCOUNT NUMBER 81-3112-00-3
CONSTANCE SHAW STANDISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF "ASSET CATEGORY" AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
	* EQUITIES *							
	COMMON STOCKS							
150	R R DONNELLEY & SONS CO COM	5.69	$9,446.25 62.97	$10,800.00 72.00	5.09	1.40	$210.00	1.94
500	EMERSON ELECTRIC CO COM	26.88	20,654.52 41.30	51,000.00 102.00	24.06	2.88	1,440.00	2.82
300	PROCTER & GAMBLE CO COM	13.95	20,637.50 68.79	26,475.00 88.25	12.49	2.70	810.00	3.06
1,600	RUBBERMAID INC COM	23.19	18,940.00 11.83	44,000.00 27.50	20.75	.28	448.00	1.02
500	SHARED MEDICAL SYSTEMS CORP COM	7.81	3,841.54 6.88	14,812.50 29.62	6.99	.72	360.00	2.43
200	SOUTHLAND CORP COM	5.13	10,895.00 54.47	9,725.00 48.62	4.59	1.12	224.00	2.30

EXHIBIT D

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Union National Bank

STATEMENT OF INVESTMENT POSITION
AS OF 04/20/87

ACCOUNT NUMBER N1-3112-00-3
CONSTANCE SHAW STANDISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF *ASSET CATEGORY* AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
200	SUN CO INC COM	6.71	10,485.00 52.22	12,725.00 63.62	6.00	3.00	600.00	4.72
800	SUPER VALU STORES COM	10.64	12,322.00 15.40	20,200.00 25.25	9.53	.42	336.00	1.66
	TOTAL COMMON STOCKS	100.00	$106,781.81	$189,737.50	89.50		$4,428.00	2.33
	* TOTAL EQUITIES *	100.00	$106,781.81	$189,737.50	89.50		$4,428.00	2.33

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Union National Bank

STATEMENT OF INVESTMENT POSITION
AS OF 04/20/87

ACCOUNT NUMBER 81-3112-00-3
CONSTANCE SHAW STANDISH

VALUATION STATEMENT

FACE AMOUNT/ NO. SHARES	DESCRIPTION	% OF *ASSET CATEGORY* AT MARKET	CARRY VALUE UNIT	TOTAL MARKET UNIT	% OF TOTAL ACCOUNT AT MARKET	ESTIMATED ANNUAL INCOME RATE	ESTIMATED ANNUAL INCOME TOTAL	% YIELD MARKET VALUE
	* FIXED INCOME SECURITIES *							
	GOVERNMENT OBLIGATIONS							
	TREASURY & FEDERAL AGENCIES							
20,000	U S TREAS NOTES 8.75% DTD 11-15-78 DUE 11-15-88	100.00	$20,118.75 100.59	$20,493.60 102.46	9.67	.08750	$1,750.00	8.54
	* CASH AND EQUIVALENTS *							
1,700	FEDERATED TRUST FOR SHORT-TERM U. S. GOVERNMENT SECURITIES	99.62	$1,700.00	$1,700.00	.80	.05090	$86.53	5.09
	PRINCIPAL CASH	0.38	77.86	77.86	.03			
	* TOTAL CASH AND EQUIVALENTS *	100.00	$1,777.86	$1,777.86	.83		$86.53	4.87
	** TOTAL ASSETS **		$120,670.42	$212,008.96	100.00		$6,264.53	2.95

*ALL PRICES AS OF STATEMENT DATE UNLESS OTHERWISE INDICATED

PITTSBURGH NATIONAL BANK

An affiliate of PNC FINANCIAL CORP

Trust Division

STATEMENT OF ASSETS

DATE 03/31/87

ACCOUNT 10-01-001-0380076 42 STANDISH CONSTANCE S 03/27/88

PAR VALUE /SHARES	ASSET DESCRIPTION	CARRYING VALUE	CURRENT MARKET VALUE
	- CASH EQUIVALENT -		
76,441	SHORT TERM INV FUND PERSONAL	76,441.00	76,441.00
	- COMMON STOCK -		
300	AVNET INC	10,045.00	10,425.00
200	INTERNATIONAL BUSINESS MACHINES	22,775.00	30,025.00
1,249	POLAROID CORP	49,179.38	91,645.38
300	UNION PACIFIC CORP	14,876.50	22,500.00
200	UNITED TECHNOLOGIES CORP	8,425.00	10,175.00
	TOTAL COMMON STOCK	105,300.88	164,770.38
TOTAL INVESTMENTS		181,741.88	241,211.38
PRINCIPAL CASH		1,426.53	1,426.53
TOTAL PRINCIPAL CASH AND INVESTMENTS		183,168.41	242,637.91

EXHIBIT E

SUPPLEMENTAL RESPONSE TO QUESTIONNAIRE FOR JUDICIAL, UNITED STATES ATTORNEY, AND DEPARTMENT OF JUSTICE NOMINEES

I

BIOGRAPHICAL INFORMATION (PUBLIC)

* * *

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

See answers to Questions Nos. 9 and 10 and in addition I am a member of the following social organizations:

Allegheny Club
Allegheny Country Club
Duquesne Club
Edgeworth Club
Harvard-Yale-Princeton Club of Pittsburgh
Igloo Club
Rivers Club
Rolling Rock Club

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Since April 2, 1980 I have been a judge of the Court of Common Pleas of Allegheny County, Pennsylvania; not eligible to practice law. There have been no other lapses in my membership in the bar of any court to which I have been admitted.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply a copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Except for the publication referred to in my answer to Question 12, I have not edited any published materials nor have I made speeches on issues involving constitutional law or legal policy.

* * *

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Mellon Bank, N.A., Trustee of the Reed Smith Shaw & McClay Self-Employed Money Purchase Retirement Trust -- fully vested separate account in this HR-10 plan; value at February 28, 1987 was $176,045.96. At age 59-1/2 I will be entitled to withdraw the entire account balance or take installment payments as authorized by the tax law.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

In civil cases, a potential conflict of interest could arise by virtue of my ownership of a legal or equitable interest in a party to the litigation. Also, although it is unlikely, it is possible that a conflict of interest could arise because I represented a party to a civil action before April 2, 1980, when I became a judge.

* * *

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

A copy of my Financial Disclosure Report is submitted herewith.

* * *

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Except for the specific instances of pro bono legal representation of the disadvantaged referred to in my original answer to Section III, Question 2, I am unable to describe specific instances of such work or to state the amount of time devoted to them. However, in connection with my representation of Clifton Crist, the petitioner in Commonwealth ex rel. Crist v. Price, 405 Pa. 384, 175 A.2d 852 (1961), I spent substantially more than 100 hours.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I do not belong to any organization which discriminates either through formal membership requirements or the practical implementation of membership requirements. Two organizations to which I belong, the Harvard-Yale-Princeton Club of Pittsburgh and the Duquesne Club, at one time did not admit women to membership. Both now do. I was active in the effort to amend the by-laws of the Harvard-Yale-Princeton Club to provide for the admission of women. This effort was ultimately successful.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Senator Heinz and Senator Specter established a commission to recommend candidates to them for nomination to federal district courts in Pennsylvania. I was interviewed by the commission in June, 1985, and it was reported to me that I was recommended to the Senators for nomination to the United States District Court for the Western District of Pennsylvania. Prior to that, I was interviewed by the Judiciary Committee of the Allegheny County Bar Association which also recommended my nomination.
Following the recommendation of the Senators' commission in June, 1985, Senators Heinz and Specter, in January, 1986, recommended to the President that I be nominated to fill one of the three existing judicial vacancies on the court. Thereafter, in July, 1986, I was interviewed by justice department officials in connection with my proposed judicial nomination. In February, 1987, I was informed by the justice department that I was to be investigated by the Federal Bureau of Investigation and by the American Bar Association Standing Committee on the Federal Judiciary. I was, subsequently, interviewed by an F.B.I. agent to whom I had submitted a completed questionnaire. I answered a questionnaire for the A.B.A. Standing Committee on the Federal Judiciary and was interviewed by one of its representatives in June, 1987. On June 30, 1987, I was

informed by the President that he had signed a document nominating me for a judgeship on the court.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No.

* * *

AFFIDAVIT

I, William Lloyd Standish, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 24, 1987
(DATE)

William L. Standish
(NAME)

(NOTARY)

MARY ANN DeSIMIO, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES JULY 1, 1989
Member, Pennsylvania Association of Notaries

RECEIVED JUL 8 1987

CHAIRMAN
and Member at Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
50 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite 3601
1600 Market Street
Philadelphia, PA 19101

FOURTH CIRCUIT
James A. Hemmerly, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Carey W. Ichter
One Shell Square
Ninth Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Jean M. Hall
One First Plaza
Suite 4300
Chicago, IL 60611

EIGHTH CIRCUIT
Jean W. Hanson
P.O. Box 80268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andersen
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Hachmann, Jr.
Winter Bldg.
2 Dexter Avenue
P.O. Box 78
Montgomery, AL 36104

DISTRICT OF COLUMBIA
CIRCUIT & FEDERAL
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1873 Eye Street, N.W.
Washington, DC 20006

BOARD OF GOVERNORS
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Fallbrook, CA 92028

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750 North Lake Shore Drive
Chicago, IL 60611
312/988-5695

STAFF ASSISTANT
Diane Livingston
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5701

AMERICAN BAR ASSOCIATION
Standing Committee on
Federal Judiciary
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

July 6, 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: WILLIAM L. STANDISH
United States District Court
Western District of Pennsylvania

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of William L. Standish for appointment as Judge of the United States District Court for the Western District of Pennsylvnaia.

A substantial majority of our Committee is of the opinion that Judge Standish is "Well Qualified" for this appointment. The minority found him to be Exceptionally Well Qualified.

Sincerely,

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

WILLIAM L. DWYER

Birth:	March 26, 1929	Olympia, Washington
Legal Residence:	Washington	
Marital Status:	Married	Vasiliki Asimakopulos Dwyer 3 children
Education:	1946 - 1949	University of Washington
	1949 - 1952	University of Washington Law School B.S. in Law
	1952 - 1953	New York University School of Law LL.B. degree
Bar:	1953	Washington
Military Service:	1953 - 1956	United States Army Judge Advocate General's Corps
Experience:	1957	Law Clerk to Justice Charles T. Donworth, Washington State Supreme court
	1957 - present	Culp, Dwyer, Guterson & Grader (firm has had various names) Partner

Office: 2700 One Union Square
Seattle, Washington 98101-3143
(206) 624-7141

Home: 2208 E. McGraw Street
Seattle, Washington 98112

To be United States Diatict Judge for the Western District of Washington.

August 17, 1987

Mr. Reginald Govan
Senate Committee on the Judiciary
Room 212, Dirksen Senate Office Building
Washington, D. C. 20510

Dear Mr. Govan:

The following are my answers to the Committee's questionnaire for judicial nominees.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

   Answer: William L. Dwyer.

2. Address: List current place of residence and office address(es).

   Answer: Home address:

   2208 E. McGraw Street
   Seattle, Washington 98112

   Office address:

   Culp, Dwyer, Guterson & Grader
   27th Floor, One Union Square
   Seattle, Washington 98101-3143

3. Date and place of birth.

   Answer: March 26, 1929, at Olympia, Washington.

4. Marital Status: (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

   Answer: Married to Vasiliki Dwyer, whose maiden name was Asimakopulos. She is not employed outside the home.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   Answer: University of Washington
   Fall 1946 to Spring 1949

   University of Washington
   School of Law
   Fall 1949 to Spring 1952
   (B.S. in Law 1951)

New York University
School of Law
Fall 1952 to Spring 1953
(LL.B. 1953)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Answer:

1953-56: U. S. Army.

1957(part): Law clerk, Washington State Supreme Court.

1957-present: Partner, Culp, Dwyer, Guterson & Grader.

1986-present: Trustee, Charles and Annie Goldmark Family Foundation.

1978-present: Officer and director, Emmett Watson's Oyster Bar, Inc.

Various dates - present: Real estate owned by my wife and myself which we rent out all or most of the time: The Varick Apartments, 503-511 E. Thomas Street, Seattle; a rental house at 2214 E. McGraw Street, Seattle; and our property at 16661 Mariner Avenue N. E., Bainbridge Island, Washington.

Various dates - present: Minority interests in other real estate holdings or contracts: Culp, Rawlinson, et al. (Hilltop); Thirteenth Floor Group (Custom House Hotel Co., Ltd.); Federal Way Real Estate (with Gordon Culp, et al.); Hesse, Dwyer, Grader, et al. (Pacific Park property); Seattle Quilt Building (with Alan Black, et al.).

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Answer: I was in the U.S. Army from August, 1953 until December, 1956. For about the first four months I was a private in the infantry, and I do not recall the serial number. I then served for about three years as a first lieutenant in the Judge Advocate General's Corps, serial number 02271956. Honorable release from active service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Answer: American Bar Association Gavel Award

Seattle-King County Bar Association, Helen M. Geisness Distinguished Service Award

Washington Law Review Outstanding Achievement Award

Governor's Award for Writers, State of Washington

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Answer: Washington State Bar Association (Board of Governors, 1982-85); Seattle-King County Bar Association (President, 1979-80, and various other positions earlier); American Bar Association; American Bar Foundation; American College of Trial Lawyers; Supreme Court Historical Society; American Judicature Society; Ninth Circuit Judicial Conference (Chairman, Western District of Washington lawyer delegates, 1981); Inter-American Bar Association; Federal Bar Association of the Western District of Washington; Washington State Trial Lawyers Association.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Answer: In addition to the professional organizations listed above, I am a member of the University of Washington Alumni Association and President's Club, the Municipal League of Seattle and King County, the Seattle Art Museum, the Washington Athletic Club, the Bainbridge Island Racquets Club, the New York University Club, and Phi Delta Phi legal fraternity, and am a trustee of the Charles and Annie Goldmark Family Foundation. I am not aware of lobbying by any of these groups, but it is possible that the Municipal League and the University of Washington Alumni Association, for example, have engaged in lobbying. I have contributed to various organizations of which I am not a member.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission of practice.

Answer: Supreme Court of the State of Washington, September 21, 1953; U.S. Court of Military Appeals, April 20, 1954; U.S. District Court for the Western District of Washington, January 14, 1958; U.S. Court of Appeals for the Ninth Circuit, April 17, 1959; U.S. Supreme Court, October 14, 1968; and U.S. District Court for the Eastern District of Washington, December 13, 1978.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Answer:

(a) Book: The Goldmark Case: An American Libel Trial, University of Washington Press, 1984.

(b) Report of the Washington State Bar Association Commission to Study the Antitrust Laws (chairman; report is a compilation of writings by commission members), 1983.

(c) President's columns, Seattle-King County Bar Bulletin, 1979-80.

(d) Chapters in various CLE publications.

(e) Copies of two recent speeches are enclosed.

13. Health: What is the present state of your health? List the date of your last physical examination.

Answer: Excellent. August 4, 1986.

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Answer: None.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Answer: Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Answer: None.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

2. What percentage of these appearances was in:

(a) federal courts;
(b) state courts of record;
(c) other courts.

3. What percentage of your litigation was:

   (a) civil;
   (b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5. What percentage of these trials was:

   (a) jury;
   (b) non-jury.

Answer: After graduating from law school in 1953 I was in the Army until late 1956. Then I worked for about three months in early 1957 as a law clerk to the late Justice Charles T. Donworth of the Washington State Supreme Court at Olympia. In the spring of 1957 Gordon Culp and I formed a two-lawyer firm called Culp & Dwyer. I have practiced with that firm ever since.

In the first few years our office was in the Northern Life Tower in Seattle; we then moved to the Hoge Building and stayed there for over twenty years; and in December, 1981, we moved to our present location at One Union Square, Seattle. The firm is now called Culp, Dwyer, Guterson & Grader and has about forty lawyers.

In the three years 1954 through 1956, while serving in the Judge Advocate General's Corps, my main duty was to prepare and try general court martial cases either as prosecutor or as defense counsel. I tried many cases including prosecutions for murder, rape, armed robbery, aggravated assault, desertion, and other major crimes.

In the first few years after Culp & Dwyer was founded in 1957 my practice was general. I tried civil and criminal cases, wrote wills, probated estates, handled adoptions, formed corporations, and did whatever work came into the office.

As time went on I concentrated more and more on litigation and that has been my specialty for many years. Much of my work has been in complex civil litigation, but I have continued to handle a wide variety of cases.

It often happens that I deal with a client only once — that is, when he or she is a party to a suit. Many cases are referred to our firm by other lawyers. My clients have included the State of Washington, King County, other public entities, major banks, national business corporations, law firms, accounting firms, non-profit organizations, small businesses, and numerous individual citizens. A good deal of work has been done on a pro bono basis. Because of the wide variety of clients I do not believe that any of them could fairly be called typical.

I have tried cases and handled appeals in the fields of antitrust, torts, contracts, criminal law, construction, motion picture law, constitutional law, domestic relations, and other areas of the law. Some of the trials have lasted for weeks or months. As a very rough estimate I would say that I have tried about two hundred and fifty cases through to judgment or verdict. Probably about a third were jury trials.

I have appeared in court frequently or occasionally in every year since 1954, except when away on sabbaticals (1966 and parts of 1975 and 1976).

Part of 1982 was taken up by a course I taught at the University of Washington School of Law, part of 1983 by the writing of a book, and parts of 1983, 1984 and 1985 by service on the Board of Governors of the Washington State Bar Association. As an estimate I would say that about half of the appearances were in federal court and about half in state courts of record. With a few exceptions near the beginning, I was chief counsel or sole counsel. While I was in the Army nearly 100% of the work was in criminal law; since then about 90% has been in civil law.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Answer: While it is hard to choose the ten most significant, I would list the following as ten of the most important cases I have tried:

(a) State of Washington v. American League, Cause No. 116038 in the Superior Court of the State of Washington for Snohomish County: In 1967 the American League of Professional Baseball Clubs voted to expand by creating new franchises in Seattle, Washington and Kansas City, Missouri. The expansion to Seattle was conditioned upon the community's providing a new stadium and a suitable interim facility in which the team would play while the new stadium was being constructed. In the winter of 1967-68 representatives of the American League came to Seattle and took part in a campaign for the passage of a bond issue which would make these projects possible. In doing so they made a number of oral statements to the effect that if the voters passed the bond issue and the facilities were built, the community would have a major league baseball club as the long-term prime tenant of the new stadium. The bond issue was passed; the city's minor league ballpark was expanded and refurbished at considerable expense as a temporary home for major league baseball; budgeting, siting, and planning studies were undertaken for the domed stadium; and in 1969 the American League placed an expansion franchise, called the Seattle Pilots, in the city. After a single season of play the owners of the club decided to sell it to buyers from Milwaukee who would move it to that city. A group of Seattle citizens protested and raised enough cash and credit to make an offer which the club's owners accepted; however, the league refused to approve the sale for the reason, among others, that the proposed new ownership would be non-profit in nature. The Seattle owners then filed for Chapter 11 protection and the club was sold to the Milwaukee buyers pursuant to a bankruptcy court order. The State of Washington and King County retained me to bring a damages action against the American League, its members, and Sportservice Corporation, a food and drink concessionaire whose exclusive long-term contract accompanied the ball club when it moved. The City of Seattle joined in the action and was represented by Lawrence K. McDonell, an assistant city attorney. The primary claim was for breach of an oral contract to place a major league baseball club in Seattle and keep it there. While the prayer of the complaint sought damages, it was hoped that a settlement could be achieved in which major league baseball would return to Seattle. After a great deal

of discovery and other pretrial work, the case went to trial in January, 1976 before the Honorable Frank D. Howard and a jury at Everett, Washington. After four weeks of trial a settlement was reached: The American League expanded to create a new franchise, the Seattle Mariners; responsible new owners were found; and a 20-year lease was entered between the baseball club and the newly completed Kingdome. An earlier one-party settlement had dismissed Sportservice out of the case in return for a monetary payment. Seattle became the first (and to date the only) community to obtain a major league baseball franchise through litigation. The case was also unusual in that it relied in large part upon an alleged contract created through informal communications made to the voting public. I was lead counsel for the plaintiffs; with me was my partner, Jerry R. McNaul. Mr. McDonell, the assistant city attorney, died in 1986. Opposing counsel for the American League were David E. Wagoner and Steven A. McKeon, 1900 Washington Building, Seattle, Washington 98101, telephone (206)682-8770, and James Garner and John Ferguson, 3200 National City Center, Cleveland, Ohio 44114, telephone (216)621-0200. Opposing counsel for Sportservice Corporation was John R. Tomlinson, 3800 Rainier Bank Tower, Seattle, Washington, 98101, telephone (206)223-7000.

(b) Reid Brothers Logging Company v. Ketchikan Pulp Company, Cause No. C75-1655, in the United States District Court for the Western District of Washington: Reid Brothers was a small independent logging company in Southeast Alaska. It retained me to bring suit against Ketchikan Pulp Company and Alaska Lumber and Pulp Company, two large pulp mill owners which had become dominant in the timber industry in the area of the Tongass National Forest. Reid Brothers claimed that the defendants had monopolized the industry, collusively driven out small loggers and mills, restrained the prices paid to the few remaining independent loggers, concertedly refrained from bidding against each other on government timber sales, and engaged in other violations of the Sherman Act. The case was tried for about three months, plus an extended post-trial briefing period, in 1980-81 before the Honorable Barbara J. Rothstein, U. S. District Court, Seattle. Judge Rothstein found that the pulp mill defendants had committed the violations charged, and awarded Reid Brothers approximately $1.5 million in damages, after trebling, plus attorney fees. The defendants appealed and the Ninth Circuit affirmed the judgment. Reid Brothers Logging Co. v. Ketchikan Pulp Co., 699 F.2d 1292 (9th Cir.), cert.denied, 104 S.Ct. 279 (1983). I was chief counsel for the plaintiff. With me were two of my partners, Richard C. Yarmuth and Peter M. Vial. Counsel for Ketchikan Pulp Company were Robert D. Raven, Peter Pfister, and Preston Moore, 345 California Street, San Francisco, California 94104, telephone (415)777-6000. Counsel for Alaska Lumber and Pulp Company were Richard S. White and Phillip D. Noble, 1500 Washington Building, Seattle, Washington 98111, telephone (206)292-1144. We also handled four related cases brought by small mills and loggers, all of which were eventually settled. The total recovered by the five plaintiffs was about $10 million. The case was important in proving a trade violation which had affected an important industry in Alaska for many years, and in obtaining relief for businesses which had been damaged.

(c) King County v. Donald M. Drake Company, Cause No. C74-7685 in the United States District Court for the Western District of Washington: King County called for competitive bids for the construction of the Kingdome, a multi-purpose domed stadium in Seattle. The successful bidder was Donald M. Drake Company, a contractor from Portland, Oregon. The job was complicated because of the unusual design including the world's largest reinforced concrete roof of its kind. Drake worked for several months, fell behind schedule, ran over its budget, claimed that the difficulties were the fault of the design team and the county, and demanded that the contract be changed from a lump-sum to a cost-plus basis. After negotiations failed to resolve the dis-

pute, Drake stopped work and removed its personnel and equipment from the job. The county declared Drake in default, terminated its contract, and retained Peter Kiewit Sons Company to finish the stadium. The county retained me to sue Drake and its bonding company, Travelers, for the difference between what the stadium would have cost had Drake performed the original contract and what it in fact cost when Kiewit had to be hired to complete the job. The county's prayer was for about $13 million and Drake counterclaimed for about $13 million. The suit was commenced in superior court and was removed by Drake to federal court on the basis of diversity of citizenship. The case was tried for five months in the winter of 1977-78 before the Honorable Morell E. Sharp, United States District Judge, at Seattle. The evidence was extremely complicated and included expert testimony on reinforced concrete, architectural design, the scheduling of interrelated construction activities, and other technical subjects. After both sides had rested there followed a post-evidence briefing period of about two months. Judge Sharp then entered findings and conclusions, and directed that judgment be entered, awarding the county about $12.3 million against Drake and Travelers and dismissing the counterclaims. The defendants appealed but the case later was settled while on appeal for about $12.5 million (the difference reflecting a part of the accrued interest on the judgment). The damages recovery in this case preserved the county's method of financing the Kingdome construction. I was chief counsel for the plaintiff. With me were my partner, Jerry R. McNaul, and Donald L. Logerwell, 300 Park Place Building, Seattle, Washington 98101, telephone (206)343-5655. Representing Drake were Stuart G. Oles and Richard M. Stanislaw, 3208 Seattle-First National Bank Building, Seattle, Washington 98154, telephone (206)623-3427. Representing Travelers was Douglas K. Haughton, 88 Spring Street, Seattle, Washington 98101, telephone (206)623-9900.

(d) In re Krogh, 93 Wn.2d 504, 610 P.2d 1319 (1980): Egil Krogh, Jr. was a member of the White House staff during the Nixon Administration and later was Undersecretary of Transportation. While on the White House staff he had served, among many other duties, as one of the directors of the "plumbers" effort to stop security leaks. In that capacity he had authorized, with the approval of his superior, a warrantless break-in of the office of Daniel Ellsberg's psychiatrist in California. The purpose was to gather information about Mr. Ellsberg. These facts came to light, largely through Mr. Krogh's voluntary disclosure of them, during the "Watergate" period. On his plea of guilty, Mr. Krogh was convicted of a felony in U.S. District Court in Washington, D.C. As a member of the Washington State Bar, he also faced disbarment proceedings in this state. He retained me to represent him before the Washington State Bar Association and the state Supreme Court. Mr. Krogh served about four or five months in a federal facility in the east. He then returned to Seattle for a hearing before a bar disciplinary panel of three members in the summer of 1974. After hearing the evidence and arguments of counsel, the panel voted unanimously to recommend a nine-month suspension from the practice of law. The state Supreme Court, however, ordered disbarment by a vote of 7 to 2. In re Krogh, 85 Wn.2d 462, 536 P.2d 578 (1975). For the next few years Mr. Krogh worked in other fields, mostly as a teacher. He then applied for reinstatement; I represented him again; and the Supreme Court reinstated him. In re Krogh, 93 Wn.2d 504, 610 P.2d 1319 (1980). This case demonstrated the law's ability to encourage redemption and rehabilitation. Mr. Krogh was a good man who committed a serious offense, paid the penalty, and then earned his way back to an honorable position in society. He is now one of my law partners. The Bar Association was represented by Kurt M. Bulmer, 505 Madison Street, Seattle, Washington 98104, telephone (206)622-6026.

(e) Goldmark v. Canwell, Cause No. 16,010 in the Superior Court of the State of Washington for Okanogan County: John Goldmark was a Harvard Law grad-

uate who moved to the State of Washington after Navy service in the South Pacific in World War II. He and his wife, Sally, purchased a cattle and wheat ranch in a remote part of eastern Washington. They became capable ranchers and raised two sons. Goldmark was elected three times to the state legislature and became a leader of the Democratic Party and chairman of the Ways and Means Committee in the state House of Representatives. In 1962, while running for reelection, he was subjected to a series of attacks which falsely accused him of being a communist or communist sympathizer. The libels were disseminated through leaflets mailed anonymously to the voters, two articles in a weekly newspaper, tape recordings circulated through the district, and a public meeting held at a veterans' organization hall at the county seat. After losing the election, Goldmark retained me to represent him in a libel action against the political opponents who had defamed him. The case was tried from early November, 1963 until mid-January, 1964 before a jury in Superior Court in Okanogan. The jury returned a verdict for Goldmark in the amount of $40,000. Six weeks later the U.S. Supreme Court handed down its decision in New York Times v. Sullivan, establishing as a matter of constitutional law that a public official suing for libel must prove not only the defamatory and false nature of the statement, but also that the defendant knew it was false or acted with reckless disregard of its falsity. The trial judge ruled that the Sullivan decision required him to enter judgment n.o.v.; in doing so, however, he noted that the jury's verdict established that Mr. Goldmark was neither a communist nor a communist sympathizer and that the defendants' statements concerning him were false. The main goal of the suit, to clear Mr. Goldmark's name, was thus attained. In a striking and unforgettable way, this case brought into the courtroom conflicting currents in American political life. I have written a book about it, The Goldmark Case: An American Libel Trial, published by the University of Washington Press in 1984. The judge was the Honorable Theodore S. Turner, visiting from King County. I served as lead counsel for the plaintiffs. Co-counsel was R.E. Mansfield, 212 Pine Street, Okanogan, Washington 98840, telephone (509)422-3610. The defendants were represented by retired Judge Joseph Wicks (deceased), Ned W. Kimball (deceased), and E. Glenn Harmon, 1114 ONB Building, Spokane, Washington 99201, telephone (509)624-5265.

(f) Pacific Lanes, Inc. v. Washington State Bowling Proprietors Association, et al., affirmed sub nom. Washington State Bowling Proprietors Association, Inc. v. Pacific Lanes, Inc., 356 F.2d 371 (9th Cir. 1966): Pacific Lanes , Inc., owned by Charles Hoffman, operated an independent bowling alley in Tacoma, Washington. It did not belong to the Washington State Bowling Proprietors Association, of which all other bowling establishments in the city were members. Pacific Lanes alleged that the association-member proprietors had joined together to try to force it out of business. It claimed that the defendants, and the state and national associations with which they were affiliated, had combined to restrict the number of bowling alleys through "overbuilding committees" and to cause non-member proprietors to be boycotted through the use of restrictive tournament eligibility rules and other means. As a result, Pacific Lanes contended that its profits had been less than they would have been in an unrestrained market. Suit was brought under the Sherman and Clayton Acts in U.S. District Court in Seattle. The trial was held before the Honorable William J. Lindberg and a jury in the fall of 1964. I was chief counsel for the plaintiff and was assisted by my partner, George L. Grader. Pacific Lanes won a verdict for $105,000, after trebling, which represented about 70% of what it was asking for, plus attorney fees and costs. On appeal by the defendants to the Ninth Circuit, the judgment was affirmed. The case was a good example of how an antitrust case of modest size can be handled economically to obtain relief for a small business. Opposing counsel were Charles R. Lonergan, Jr., 847 Logan Building, Seattle, Washington 98101, telephone (206)624-2800, and the late Patrick J. Corbett.

(g) Fine Arts Guild v. City of Seattle, 74 Wn.2d 503, 445 P.2d 602 (1968): Fine Arts Guild, Inc. owned and operated a theater in Seattle which exhibited to the public high quality motion pictures, chiefly foreign language films. The City of Seattle had imposed for many years a system of regulating motion pictures in which exhibitors were required by ordinance to cooperate with a board of theater supervisors empowered to view films before they were shown to the public and to recommend that they be not shown, or cut, or otherwise restricted. Fine Arts Guild, claiming that the regulatory system imposed an unconstitutional prior restraint or protected speech, brought suit against the City for declaratory and injunctive relief. The case was tried in 1965 before the Honorable James Mifflin. The trial court, and the Supreme Court on the City's appeal, held for the plaintiffs under the First Amendment and the comparable provision of the Washington State Constitution, and issued the requested relief. I was sole counsel for the Fine Arts Guild, Inc. at the trial; Louis F. Nawrot, Jr. of my firm joined in working on the appeal brief. A group of film distributing companies who were co-plaintiffs were represented by Thomas L. Morrow, who is now retired and lives at 6206 159th Place N.E., Redmond, Washington 98052, telephone (206)882-1888. The City was represented by Arthur T. Lane, 1026 Fifth Avenue West, Seattle, Washington 98119, telephone (206)282-6880.

(h) Olrogg v. Cheney, Cause No. 216687 in the Superior Court of the State of Washington for Pierce County: Marian Cheney was the widow of Ben B. Cheney, a wealthy Tacoma lumberman. After her husband's death she married Elgin Olrogg. She was then sued for several million dollars by the first Mrs. Olrogg, a divorcee, who claimed alienation of her former husband's affections. Mrs. Cheney, whom I represented, denied the allegations and counterclaimed for defamation and invasion of privacy. The case was tried for about two weeks in 1974 before the Honorable Stanley W. Worswick and a jury in Pierce County Superior Court, Tacoma, Washington. The jury returned a verdict for the defendant, dismissing the plaintiff's claim and awarding damages to Mrs. Cheney on her counterclaims for defamation and invasion of privacy. Mrs. Cheney correctly felt that the verdict cleared her name. She later waived collection of the counterclaim damages and the plaintiff dropped her appeal. I was the sole counsel at trial for Mrs. Cheney. The plaintiff was represented by Lawrence Ross, 1008 S. Yakima, Suite 101, Tacoma, Washington 98402, telephone (206)572-3550

(i) State v. Dixon, Cause No. 48857 in the Superior Court of the State of Washington for King County: In the summer of 1968, a time of racial unrest in the United States, Seattle police officers arrested Aaron Dixon, who, although only nineteen years old, was captain of the local Black Panther organization. Dixon was charged with grand larceny. It was claimed that he had knowingly received a stolen electric typewriter which was found at the organization's headquarters. I was asked to defend Mr. Dixon on a pro bono basis, and agreed to do that. The case was tried to a jury and the Honorable James Mifflin, King County Superior Court. Mr. Dixon took the stand, and testified that he was innocent. We presented alibi witnesses and other evidence in his behalf. He was found not guilty by the jury. This case illustrated the ability of our system of justice to provide fair trials even to defendants whom most would consider to be outside the mainstream of social and political life. I was sole counsel for the defense. The state was represented by two deputy prosecutors who are now in private practice: William L. Dowell, P.O. Box 427, Longview, Washington 98632, telephone (206)425-8680, and Paul M. Acheson, The Redwood Building, Room 200, Bellevue, Washington 98004, telephone (206)455-4166.

(j) Committee for an Independent P-I v. Smith, 704 F.2d 467 (9th Cir. 1983): The owners of Seattle's two daily newspapers, The Times and The Post-Intelligencer

("P-I"), applied to the Attorney General of the United States under the Newspaper Preservation Act, 15 U.S.C. §1801 et seq., for a limited exemption from the antitrust laws in order to enter into a joint operating agreement ("JOA"). Under the proposed JOA the two dailies would jointly set their advertising rates, circulation rates and areas, and edition times. Each of the functions of production, circulation, and advertising would be performed by a single department for both papers. Profits from the combined operation would be divided according to a formula. The two dailies would cease to be commercial competitors while remaining editorial competitors. Without an exemption some of these activities would violate the Sherman Act, 15 U.S.C. §1. I was asked to represent four groups who objected to the proposed arrangement: P-I employees who would lose their jobs, suburban newspaper owners, advertisers, and concerned members of the public. The case was handled on a pro bono basis, the clients paying the out-of-pocket costs. The Attorney General appointed an administrative law judge ("ALJ") who held a three-and-one-half-week hearing in Seattle in November, 1981. Although the Antitrust Division joined with the opponents in asking that the application for an exemption be denied, the ALJ found that the P-I was a failing newspaper within the meaning of the Act and recommended that it be granted. In June, 1982 the Attorney General issued an order granting the exemption. The opposing parties (my clients) then filed a judicial review action in U.S. District Court in Seattle. That court, the Honorable Barbara J. Rothstein, granted the plaintiffs' motion for summary judgment in August, 1982, and entered judgment setting aside the Attorney General's administrative order as contrary to law. The applicants appealed, the Court of Appeals reversed (the opinion is cited above), and the U.S. Supreme Court denied certiorari. The Seattle dailies then implemented the JOA. This case was the first arising under the Newspaper Preservation Act to reach a court of appeals, and the first involving the Attorney General's statutory power to approve joint operating arrangements to be decided by the federal courts at any level. The District Court and the Ninth Circuit decided important issues concerning the Act's meaning and constitutionality. I was chief counsel for the opponents. With me were John S. Ebel and Kathleen Albrecht of my firm. The Hearst Corporation (owner of the P-I) was represented by Jonathan E. Thackeray and John M. Gherlein, 3200 National City Center, Cleveland, Ohio 44114, telephone (216)621-0200; The Times was represented by P. Cameron DeVore and Payton Smith, 2600 Century Square Building, Seattle, Washington 98101, telephone (206)622-3150; and the Antitrust Division was represented by Lawrence Aldrich and others of the Department of Justice, Washington, D. C.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Answer:

(a) Service with Bar Associations. This has included the following:

(i) Member, Board of Governors, Washington State Bar Association, 1982-85; President (1979-80) and Trustee (1969-72) of Seattle-King County Bar Association; past chairman of Court Congestion Committee and Long Range Planning Committee, SKCBA; chairman of Washington State Bar Association Special Commission to Study the State Antitrust Laws, 1981-82; past chairman of the Lawyer Delegates, W.D. Wash. to the Ninth Circuit Judicial Conference; chairman for two years of Washington State Bar Association Committee on Continuing Legal Education; fellow, American College of Trial Law-

yers; fellow, American Bar Foundation; member, American Bar Association, Supreme Court Historical Society, American Judicature Society, Inter-American Bar Association, Federal Bar Association of the Western District of Washington, and Washington State Trial Lawyers Association.

(ii) Helped draft and implement Local Rule CR 39.1 of the United States District Court for the Western District of Washington, providing for the mediation of civil cases by volunteer lawyers. This rule has proved helpful in alleviating calendar congestion. The District Court's experience with it has led to the adoption of similar rules in other federal jurisdictions.

(iii) Proposed and helped implement the Volunteer Legal Services Program of the Seattle-King County Bar Association. This program makes pro bono legal services, provided by volunteer lawyers, available to clients who cannot afford to pay.

(iv) Was co-drafter of RCW 4.84.185, a Washington statute allowing assessment of attorney's fees where a claim or defense was asserted without reasonable cause.

(v) Served as chairman of a Board of Governors committee whose report has led to a forthcoming pilot project whereby the State Bar will provide skills training to newly admitted lawyers.

(b) Pro bono matters. See the answer to Item III-1, below.

(c) Cases settled before trial or resolved by motion. There have been a great many of these, of which the following are illustrative:

(i) Labbee, et al., v. Wm. Wrigley, Jr. Company, et al., Civil Cause No. 4029 in the United States District Court for the Western District of Washington: Recovery in 1975 of $13.5 million plus injunctive relief in class action settlements for peppermint and spearmint growers who claimed price fixing by the major users of mint oil. The judge was the Honorable George H. Boldt. I was chief counsel for the plaintiffs. A number of partners and associates worked with me, primarily David F. Berger, who now practices at 2626 First Interstate Center, Seattle, Washington 98104, telephone (206)343-5655. Counsel for defendants were John Cusack, Suite 3200, One First National Plaza, Chicago, Illinois 60603, telephone (312)726-2452; Richard S. White, 1500 Washington Building, Seattle, Washington 98111, telephone (206)292-1144; Richard E. Williams, 1900 Washington Building, Seattle, Washington 98101, telephone (206)682-8770; Payton Smith, 2600 Century Square Building, Seattle, Washington 98101, telephone (206)622-3150; DeWitt Williams, 1400 Washington Building, Seattle, Washington 98111, telephone (206)628-6600; Payne Karr and John F. Kruger, 1111 Third Avenue, Seattle, Washington 98101, telephone (206)223-1313; Max Wildman, Suite 3000, One IBM Plaza, Chicago, Illinois 60611, telephone (312)222-0400; and D. Wayne Gittinger, 3800 Rainier Bank Tower, Seattle, Washington 98101, telephone (206)223-7000.

(ii) Golob & Sons, Inc. v. Schaake Packing Company, Inc., et al., Cause No. 821982, and Evans v. Schaake Packing Company, et al., Cause No. 824327, in the Superior Court of the State of Washington for King County: Recovery in 1980-81 of about $4.5 million plus other consideration in a suit brought by cattle feeders who claimed antitrust violations by meat-packing companies. The case involved one interim appeal, see 93 Wn.2d 257, 609 P.2d 444 (1980). The trial judge was the Honorable Robert M. Elston, King County Superior Court. I was chief counsel for the plaintiffs. With me were Richard C. Yarmuth and Robert D. Stewart of my firm. Counsel for the defendant meat packers

were D. Wayne Gittinger, 3800 Rainier Bank Tower, Seattle, Washington 98101, telephone (206)223-7000; Larry M. Carter, 2000 IBM Building, Seattle, Washington 98101, telephone (206)623-7580; Fredric C. Tausend, 800 Waterfront Place, Seattle, Washington 98104, telephone (206)223-1600; Thomas J. Greenan, 29th Floor, One Union Square, Seattle, Washington 98101, telephone (206)622-1711; Richard S. White, 1500 Washington Building, Seattle, Washington 98111, telephone (206)292-1144; Richard E. Williams, 1900 Washington Building, Seattle, Washington 98101, telephone (206)682-8770; and Bruce Johnston, 3400 Rainier Bank Tower, Seattle, Washington 98101, telephone (206)624-8300. There was also a group of supermarket-proprietor defendants who were ordered dismissed on summary judgment earlier in the case, and who then settled with the plaintiffs separately, the dismissal order being vacated. Their counsel were as follows: Carl H. Hagens, The Financial Center, 1215 Fourth Avenue, Seattle, Washington 98161, telephone (206)292-9988; Richard W. Odgers, 225 Bush Street, San Francisco, California 94104, telephone (415)983-1000; Albert R. Malanca, 2200 1st Interstate Plaza, Tacoma, Washington 98402, telephone (206)572-5050. Another defendant, with whom the plaintiffs settled still earlier in the litigation, was represented by Richard F. Broz, 3300 Seattle-First National Bank Building, Seattle, Washington 98154, telephone (206)623-5890.

(iii) MacLean v. First Northwest Industries of America, Inc., 96 Wn.2d 338, 635 P.2d 683 (1981): Defense of the Seattle SuperSonics basketball club against a class action alleging discrimination against men in the operation of a "Ladies' Night" ticket-sale promotion. An order granting summary judgment of dismissal was affirmed by a five-to-four vote of the State Supreme Court. I was chief counsel for the SuperSonics. With me was Karen R. Pederson, who was then an associate in our firm and is now at 3033 West Viewmont Way West, Seattle, Washington 98199, telephone (206)285-4155. The City of Seattle, as co-defendant, was represented by Douglas N. Jewett, City Attorney, and Charles D. Brown, Assistant City Attorney. Counsel for the plaintiff was Judith E. Bendich, 2111 Smith Tower, Seattle, Washington 98104, telephone (206)622-3536. The trial judge was the Honorable Warren Chan, King County Superior Court.

(iv) Nelson v. Granat, Cause No. 83-2-13692-0, King County Superior Court, and related cases: Defense of thirty-seven houseboat owners against eviction notices given simultaneously by three Lake Union dock owners, and counterclaims for damages. The matter was eventially settled for the entry of 15-year moorage leases. In the process, I helped draft a new "floating homes" ordinance which the City adopted to replace one that had been held unconstitutional. Working with me were two associates in my firm, and Lawrence B. Ransom, 700 Peoples National Bank Building, Seattle, Washington 98171, telephone (206)624-1940. Counsel for the dock owners were Clinton H. Hattrup, 1018 Joseph Vance Building, Seattle, Washington 98101, telephone (206)624-4949; Joanne K. Lipson, 2500 Columbia Center, Seattle, Washington 98104, telephone (206)623-4990; and Rodney T. Harmon, 1800 Skyline Tower, P.O. Box 97300, Bellevue, Washington 98009, telephone (206)454-2344.

(v) Seattle-First National Bank v. Sealaska Corporation, Cause Nos. C83-350V and C83-1316V in the U.S. District Court for the Western District of Washington: Settlement in 1986 of complex commercial litigation involving several million dollars in claims between a major bank and Sealaska, an Alaska native corporation. Co-counsel with me for Sealaska were Bruce E. Gagnon, 420 L Street, Anchorage, Alaska 99501, telephone (907)276-1700 and Paul L. Dillon, One Sealaska Plaza, Suite 301, Juneau, Alaska 99801, telephone (907)586-2890. Counsel for the bank were Evan L. Schwab and Craig Miller, 2600 Century Square Building, Seattle, Washington 98101, telephone (206)622-3150. The judge was the Honorable Donald L. Voorhees, U.S. District Court.

(vi) Allwardt, et al. v. John Barth, Inc., et al., Cause No. C-81-488RJM in the U.S. District Court for the Eastern District of Washington: This action, brought by Yakima Valley hop growers against hop dealers, alleged price fixing and other violations which injured the growers in the form of artificially reduced prices for their crops. After extensive discovery and pretrial work, the case was settled in 1986. I was lead counsel for the plaintiffs. With me were Robert D. Stewart and others of my firm and our co-counsel, David F. Berger, 2626 First Interstate Center, Seattle, Washington 98104, telephone (206)343-5655. The trial judge was the Honorable Robert J. McNichols at Spokane. The settlement judge was the Honorable Robert Coyle. The file, including the terms of the settlement, remains sealed by court order. Counsel for the defendants were Merrill G. Davidoff, 1622 Locust St., Philadelphia, Pennsylvania, telephone (215)875-3000; Peter D. Byrnes, 31st Floor, First Interstate Center, Seattle, Washington 98104, telephone (206)622-2000; Donald H. Mullins and Anthony Shapiro, 800 Waterfront Place, Seattle, Washington 98104, telephone (206)223-1600; John S. Moore, Jr., 405 E. Lincoln Avenue, Yakima, Washington 98901, telephone (509)248-6030; and Ted A. Roy, 201 East "D" St., Yakima, Washington 98907, telephone (509)248-1919.

(d) Teaching: I designed and taught a course entitled History and Philosophy of Litigation in 1982 as Adjunct Professor at University of Washington School of Law; am a member of the Visiting Committee there; have been a lecturer at CLE programs sponsored by the Practising Law Institute, the Washington State Bar Association, the Washington State Trial Lawyers Association, the University of Puget Sound, the University of Washington, and the National Institute for Trial Advocacy; and in June, 1986, was a participant in the Smithsonian Institution's American Trial Lawyers Program at Washington, D. C.

(e) Work as Mediator or Arbitrator: I have often served in these capacities, and have mediated several cases on a volunteer basis for the U.S. District Court in Seattle and for the Ninth Circuit Court of Appeals.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Answer: When I cease being a partner in Culp, Dwyer, Guterson & Grader and retire from the practice of law (retirement to include accepting a teaching position, judgeship, or other position that does not constitute the practice of law), the following will take place:

(a) My capital account will be paid in full at the time of departure (this represents my share of the total amount invested by the partners in the assets of the firm);

(b) I will receive a retirement pension of $40,000 per year for five years; and

(c) I will have no interest in any fees earned by the firm after I leave. As to fees earned but not received and costs advanced but not recovered while I was a partner, the firm will pay my percentage share of those as they are

collected. The amounts will be finally determined and fixed at the time of departure, with the exception of any contingent fee cases then pending. The latter should not exceed about seven or eight in number. I would expect that this process will be completed long before the five-year pension period ends.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Answer: I will verify at the outset of each case that no conflict exists. Should any arise, I will either eliminate it or recuse myself. I am not aware of any categories of litigation or financial arrangements that would be likely to present potential conflicts of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Answer: No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

Answer:

Description	1986	1987 (through 7/28/87 unless otherwise noted)
Interest Income:		
Canadian Imperial Bank	17	insignificant amount for 1987
Rainier Bank	2591	1694
Rainier Varick Account	284	150
Sitzmark Contract	855	570
Total Interest	3747	2414
Dividend Income:		
US Bancorp	99	0
Dean Witter Reynolds Inc.	176	0
Dean Witter Sears Liq. Asset	46	0
Kalama Chemical Inc.	500	0
Total Dividends	821	0

Capital Gains:			
From sale of stock:			
U.S. Bancorp - Gross proceeds	12761		
Cost	4720		
Gain	8041		
Kalama Chemical Inc. - Gross proceeds	40000		
Cost	25000		
Gain	15000		
English Pub Associates - Gross proceeds	77		
Cost	1604		
Gain	-1527		
Other:			
Sitzmark Contract (Landeen) - Gross		9500	
Cost		9500	
Gain		0	
From Partnerships:			
Higgins Island Tenancy in common			
EIN 91-6104215	25	*	
Sale of Federal Way Real Estate:			
Gross proceeds (cash + note)		700000	
Approximate cost		178000	
Approximate Gain		522000	
Total Capital Gains	21539	522000	
Rental Properties:			
Gross rents			
Rental house	6600	3850	
Varick Apartments	90228	49181	(through 6/30
Vacation Home	3500	2750	
Less expenses			
Rental expenses other than dep'n	-98731	-41037	(through 6/30 estimated)
Depreciation	-40862	-22916	*
Net Rental Income	-48265	-8172	
Partnership Income:			
Culp, Dwyer, Guterson & Grader			
EIN 91-0677076	205350	167918	(through 6/30
Related expenses	-1445	0	
Charitable Contribution	-1763	0	
Thirteenth Floor Group			
Custom House Hotel Co. Ltd			
EIN 91-0977366	-216	*	
Charitable Contributions	-7	*	
1231 loss	-78	*	
Federal Way Real Estate			
EIN 91-6082769	4	*	
Related expenses	-3771	*	
Interest Expense	-3808	*	

Hesse, Dwyer & Grader (336th)			
Pacifica Park			
EIN 91-6091531			
Related Expenses	-7219	*	
Interest Expense	-1392	*	
Higgins Island Tenancy in Common			
EIN 91-6104215	125	*	
Related Expenses	-60	*	
Seattle Quilt Association			
EIN 91-1174889	-35441	*	
Total Net Partnership Income	150270	167918	*No data available for 1987
Miscellaneous Income			
B'nai B'rith Raffle Winnings	10000	0	
UW Honorarium	100		
Total Miscellaneous Income	10100	0	

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

Answer: The completed schedule is attached.

6. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Answer: No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Answer: While serving as an officer of the Seattle-King County Bar Association in 1979-80, I helped to originate the Volunteer Legal Services ("VLS") program, through which lawyers in the county donate legal advice and representation to persons who need help but cannot afford to pay for it. Currently about 400 clients per year receive free legal service under the program. The association hopes to double the number of lawyers in the VLS panel this year. Much of my other work with bar associations has been directed to making legal services better and more available to the poor and to middle-income citizens. In addition, I have handled on a pro bono basis many cases involving

the public interest, or claims of infringement of constitutional liberties, or unpopular criminal defendants, or simply clients who could not afford to pay. It is not possible to list all of these or to state the number of hours. Examples include the following: In 1985 I provided legal services without charge to Parents in Arms, a group made up mostly of parents of children who had become runaways, drug-users, or "street children." One purpose of the group was to obtain the closure of a Seattle teen-agers' night club which was responsible for introducing many children to alcohol, drugs, and illicit sex. With the help of excellent work by the police and the prosecuting attorney, the effort succeeded and the night club was permanently abated. In 1981-82 I represented, without charge, over a hundred newspaper employees who would lose their jobs, and other clients, in opposing a proposed joint operating arrangement between Seattle's two daily newspapers. The services provided by my firm would ordinarily have cost several hundred thousand dollars. In 1986-87 I have provided many hours of free service to King County and to Thomas and Terrell McGrath in regard to complex civil matters where they are not in a position to pay. Others in this category have included the Goldmark case, described above (a long trial undertaken essentially on a pro bono basis); the Krogh matter described above (it was agreed that Mr. Krogh, who was without resources at the time, would pay if and when he could); the defense in State v. Dixon, described above; a homicide inquest involving the death of Leslie Allen Black, a young black man; and a large number of other civil and criminal cases. Much of my work as a teacher and mediator has also been aimed at helping those who are disadvantaged in dealing with the justice system.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates-- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

Answer: No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Answer: On January 22, 1986, Judge Donald L. Voorhees of the U.S. District Court for the Western District of Washington wrote to the President advising that he intended to retire to senior status. Soon afterward, the Washington State Bar Association sent to Senators Gorton and Evans a list of persons approved for nomination as Judge Voorhees' successor. My name was on the list. There is no selection commission in our jurisdiction. On March 4, 1986, Senators Evans and Gorton wrote to the Attorney General recommending that I be appointed to fill the vacancy on the district court bench. On June 6, 1986, I was interviewed at the Department of Justice. The ABA rating process and the FBI background investigation were carried out in the summer of 1986. On September 26, 1986, the President nominated me for the position. A few days later the Senate adjourned without having considered the nomination, and accordingly it expired by law at the end of the year. Senator Evans asked that it be renewed, and was supported in that request by newly-elected Senator Adams. On July 28, 1987, the President again nominated me for appointment as successor to Judge Voorhees, who in the meantime had retired to senior status.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

Answer: No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Answer: These criticisms all reflect limitations which must be respected by the courts. The separation of powers is basic to our system of government. When the judiciary, or for that matter any of the three branches, oversteps its bounds, the constitutional structure is weakened. Federal judges should bear in mind the limits imposed by the "cases and controversies" provision of the Constitution (Article III, Section 2), the requirements of standing and ripeness, and the court's discretionary right to decline to exercise jurisdiction under certain circumstances. It is equally important, however, that judges avoid misusing legitimate doctrines of restraint to avoid ruling in difficult situations when jurisdiction in fact exists and should be exercised.

American Bar Association

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and Member at Large
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September 29, 1986

CONFIDENTIAL

The Honorable Strom Thurmond
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: WILLIAM L. DWYER
United States District Court
Western District of Washington

Dear Senator Thurmond:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of William L. Dwyer for appointment as Judge of the United States District Court for the Western District of Washington.

A substantial majority of our Committee is of the opinion that Mr. Dwyer is "Exceptionally Well Qualified" for this appointment. The minority found him to be well qualified.

Sincerely,

Robert B. Fiske, Jr.

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members and
Certain Former Chairpersons

RECEIVED JUN 2 5 1987

ERNEST C. TORRES

Birth:	October 6, 1941	New Bedford, Massachusetts
Legal Residence:	Rhode Island	
Marital Status:	Married	Jan Huff Torres 3 children
Education	1959 - 1963	Dartmouth College A.B. degree
	1965 - 1968	Duke University Law School J.D. degree
Bar:	1968	Rhode Island
Experience:	1968 - 1974	Hinckley, Allen, Salisbury & Parsons Associate
	1974 - 1980	Saunders & Torres Partner
	1975 - 1980	State Representative R.I. House of Representatives
	1980 - 1985	Rhode Island Superior Court Associate Justice
	1985 - 1986	Aetna Life & Casualty Assistant Vice President
	1986 - present . . .	Tillinghast, Collins & Graham Partner
Office:	One Old Stone Square Providence, R. I. 02903 401 456-1200	
Home:	90 Stone Ridge Drive East Greenwich, R. I. 02818	

To be United States District Judge for the District of Rhode Island

I. Biographical Information (Public)

1. Full name (include any former names used).

Ernest C. Torres

2. Address: List current place of residence and office address(es).

Home: 90 Stone Ridge Drive
East Greenwich, R.I.
02818
401 - 884 - 6937

Office: Tillinghast, Collins & Graham
One Old Stone Square
Providence, R.I.
02903
401 - 456 - 1200

3. Date and place of birth

October 6, 1941
New Bedford, Massachusetts

4. Marital Status (include maiden name of wife or husband,s name) List spouse,s occupation, employer's name and business address(es).

Married.
Jan Huff
Consultant for the Division of Substance Abuse
Department of Mental Health, Retardation & Hospitals
Substance Abuse Administration Bldg.
Cranston, RI 02920

5. Education: List each college and law school you have attended, including dates of attendance, degrees receive, and dates degrees were granted.

Dartmouth College
1959 - 1963
A.B. 1963

Duke University Law School
1965 - 1968
J.D. 1968

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

September 1963 - June 1964
Teacher and Coach
Salisbury School
Salisbury, CT.

September 1964 - June 1965
Teacher, Coach and Assistant Dean
Kent School
Kent, Ct.

June 1968 - April 1974
Associate
Hinckley, Allen, Salisbury & Parsons*
220 Industrial National Bank Building
Providence, RI

*now Hinckley, Allen, Tobin & Silverstein
1500 Fleet Center
Providence, RI 02903

April 1974 - May 1980
Partner
Saunders & Torres*
925 Main St.
East Greenwich, RI 02818

* now Saunders, Dumas & Fleury
130 Main St.
East Greenwich, RI 02818

May 1980 - June 1985
Associate Justice
Rhode Island Superior Court
250 Benefit St.
Providence, RI 02903

July 1985 - June 1986
Assistant Vice President
Aetna Life & Casualty
151 Farmington Ave
Hartford, Ct. 06156

July 1986 - Present
Partner
Tillinghast, Collins, & Graham
One Old Stone Square
Providence, RI 02903

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Alfred P. Sloan Scholar - Dartmouth College
Duke University Scholarship - Duke University Law School
Jaycee's Distinguished Service Award (1974)

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association (1968 - present)
Rhode Island Bar Association (1968 - present)
- member of Federal Court Bench-Bar Committee
- nominated to the House of Delegates
American Trial Lawyers Association (1975 - 1980 and 1985 - present)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong (such as civic, educational "public interest" law, etc.).

Some members of my law firm engage in lobbying activities before the Rhode Island Legislature on behalf of clients.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

Rhode Island Supreme Court - November 8, 1968
United States District Court for the District of Rhode Island - December 16, 1969

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written. Please supply a copy of any significant speech by you on constitutional law or national policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None other than unpublished written opinions as a trial judge.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Excellent. May 18, 1987

14. **Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

From May, 1980 until June, 1985, I was an Associate Justice of the Rhode Island Superior Court. I was appointed by the Governor with the advice and consent of the State Senate. The Court is the state's highest trial court and has jurisdiction over felonies; civil cases in which the amount in controversy exceeds $10,000 and cases in equity.

15. **Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.**

Most of the cases over which I presided as a trial judge were either jury trials or cases in which I rendered bench decisions as opposed to written opinions. Furthermore, written opinions of the court on which I served were not published. However, summaries of some of my decisions are included in my answer to Part I, Question 18.

To my knowledge, 25 of my decisions were appealed to the Rhode Island Supreme Court. Of those, 20 were affirmed and 5 were reversed in whole or in part. The reversals are as follows:

1. Forte Brothers, Inc. v. National Amusements, Inc., No. 84-487 (May 28, 1987) . This was a suit by a subcontractor against the owner of a project and its architect alleging that the subcontractor had not been paid for all of the work it performed. The claim against the architect was based on its alleged negligence in not certifying the work as complete. I granted summary judgement as to the architect on the ground that it had a duty to the owner by which it was employed but not to the subcontractor with which it had nc contractual relationship. In reversing, the Supreme Court held that the architect did owe a duty to the subcontractor.

2. O'Connors v. Helfgott, _____R.I. _____, 481 A2d 388 (1984). In this case, two adjacent towns entered into an agreement to create a regional school district serving both. Even though one community had nearly twice the population of the other, the agreement provided that each would be equally represented on the school committee governing the district. It further provided, in essence, that neither community could withdraw from the arrangement without the consent of the other. That arrangement was then implemented by legislation enacted by the Rhode Island legislature.

A member of the regional school committee, who was a resident of the larger community, brought suit seeking a declaration that the committee's composition violated the principle of "one man one vote" and a court ordered reapportionment of the district. In addition, the plaintiff sought to recover her attorney's fees from the committee; the smaller community and its representatives on the committee.

I ruled that the composition of the committee did, in fact, violate the equal protection requirements of the Fourteenth Amendment. However, I concluded that reapportionment was not an appropriate remedy for two reasons. First, I found that the equal representation provision induced the smaller town to join the district and since it could not withdraw without the consent of its larger partner, it would be forced to participate in an arrangement to which it had not agreed. Second, I concluded that the plaintiff had adequate alternative remedies (i.e., a declaratory judgment that the district was illegally constituted and dissolution of the district).

At the plaintiff's request, I rendered a declaratory judgment that the district was illegally constituted. Plaintiff declined to request an order dissolving the district. In addition, I denied her request for attorneys' fees on the grounds that the defendents had never been asked to reapportion the district and, at all times, had acted in accordance with the terms of the agreement between the two communities.

The Rhode Island Supreme Court affirmed my holding that the committee was illegally constituted but ruled that I erred in not ordering its reapportionment or awarding attorneys' fees. In so doing, it said that, without reapportionment, the disparity in voting power would continue. Furthermore, it ruled that under 42 U.S.C.A. § 1988, the "good faith" of the defendants was not a "special circumstance" sufficient to warrant denial of an attorney's fee award.

3. Arlan v. Cervini, _____ R.I. _____, 478 A2d 976 (1984) In this case, the plaintiff had suffered personal injuries including some facial scars. In accordance with previous decisions of the Rhode Island Supreme Court, I instructed the jury that the scars themselves and any pecuniary loss and/or pain and suffering that flowed from them were compensable but humiliation or embarrassment arising from consciousness of the scars was not. On appeal, the Rhode Island Supreme Court overruled its prior decisions and remanded for a new trial on the issue of damages.

4. Ondis v. Pion, _____ R.I. _____, 497 A2d 13 (1985) This case was tried before the Supreme Court's decision in Arlan was issued and so were my instructions to the jury. On appeal, the Rhode Island Supreme Court determined that the Arlan rule should be applied retroactively to cases pending on appeal at the time the opinion was filed. Accordingly, it remanded this case, too, for a new trial on the issue of damages.

5. Bishop v. Javorski, _____R.I._____, 524 A2d 1102 (1987) This was a medical malpractice suit brought on behalf of a minor against several physicians, a hospital and the State of Rhode Island. The allegations of the State were that it did not perform certain blood tests that were routinely done on all newborn infants. The suit was brought eight years later and I granted summary judgment as to the State on the ground that the statute authorizing suits against the State requires that they be brought within three years. On appeal, the Rhode Island Supreme Court ruled that,the three year period under the State's "tort claims act" was tolled during the plaintiff's minority.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

President, East Greenwich, (R.I.) Town Council (1972 - 1974) elected

State Representative (R.I.) (1975 - 1980) elected

Deputy Minority Leader - Rhode Island House of Representative, (1977 - 1980) elected by colleagues

I have never been an unsuccessful candidate for public office.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

17. a. (1-3)

June 1968 - April 1974
Associate
Hinckley, Allen, Salisbury & Parsons*
2200 Industrial National Bank Building
Providence, RI

*now Hinckley, Allen, Tobin & Silverstein
1500 Fleet Center
Providence, RI 02903

April 1974 0 May 1980
Partner
Saunders & Torres*
925 Main St.
East Greenwich, RI 02818

* now Saunders, Dumas & Fleury
130 Main St.
East Greenwich, RI 02818

May 1980 - June 1985
Associate Justice
Rhode Island Superior Court
250 Benefit St.
Providence, RI 02903

July 1985 - June 1986
Assistant Vice President
Aetna Life & Casualty
151 Farmington Ave
Hartford, CT 06156

July 1986 - Present
Partner
Tillinghast, Collins & Graham
One Old Stone Square
Providence, RI 02903

17. (cont.) Legal Career

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

June 1968 - March 1974

During this period, I was an associate at the second largest law firm in Providence. My first year was spent on a variety of assignments spanning most areas of the firm's practice. The firm then instituted a "rotation system" and I spent one year each in the business and corporate department and the estate planning and administration department. The remaining two and a half years were spent in the litigation department where I engaged primarily in business and corporate litigation, insurance defense work and some environmental litigation.

Most of the firm's clients were medium size to large businesses and financial institutions.

I left in March 1974 to establish my own firm in the town where I lived.

March 1974 - May 1980

During this period, I was a partner in a small suburban law firm that I founded with another lawyer

My practice was fairly general with emphasis on civil litigation (primarily business, real estate and plaintiff's personal injury cases); business and corporate law; real estate transactions and estate planning and administration.

Our clients were primarily small businesses and individuals .

I left in May 1980 to accept an appointment to the Rhode Island Superior Court.

May 1980 - June 1985

During this period, I was an Associate Justice of the Rhode Island Superior Court, the state's general jurisdiction trial court.

While there, my assignments at various times included assisting on the jury trial calendar; deciding appeals from rulings of administrative agencies; being in charge of the civil motion calend being in charge of the formal and special cause calendar (civil non jury matters including requests for preliminary injunctions) and being in charge of the daily criminal calendar (consisting primarily of arraignments, warrants, motions, bail hearings and violation hearings).

I resigned in June 1985 to accept a position as Assistant Vice-President at Aetna Life & Casualty.

July 1985 - June 1986

During this period, I was an Assistant Vice President of Aetna Life & Casulaty Co. based in the Commercial Division's Claim-Legal Department. My principal responsibility was to develop and manage the company's national staff counsel operations consisting of 32 offices; approximately 120 lawyers and an equal number of support personnel. My responsibilities also included identifying opportunities for and effectively utilizing alternate dispute resolution techniques and providing counsel regarding major claims litigation and coverage and liability issues mainly in the asbestos and hazardous waste areas.

I resigned in June 1986 to return to Rhode Island and the practice of law.

July 1986 - present

I am a partner in the firm of Tillinghast, Collins & Graham, the third largest law firm in Rhode Island.. The firm engages in a fairly general practice. Most of its clients are medium size or large businesses; financial institutions; health care organizations, utilities and governmental agencies.

My practice focuses on civil litigation; business law and representation of public agencies.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

Since joining Tillinghast, Collins & Graham in July, 1986 I have appeared in court regularly.

From July, 1985 to June 1986, while at Aetna Casualty & Surety Co., I did not appear in court at all.

During the five year period from May 1980 to June 1985, I was a trial judge and appeared in court on a daily basis.

Prior to 1980, I appeared in court fairly regularly except between 1972 and 1974 when my practice consisted exclusively of trial work and I appeared on almost a daily basis.

2. **What percentage of these appearances was in:**
(a) federal courts;
(b) state courts of record;
(c) other courts.

During the past year, approximately 50% of my appearance have been

17. c (2) cont.

have been in federal courts and approximately 50% have been in state courts of record.

My five years of service as a trial judge were all spent on a state court of record.

Prior to that, approximately 20% of my appearances were in federal courts and 80% were in state courts of record.

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

During the past year, 100% of my litigation has been civil.

During my tenure as a trial judge, approximately 80% of my time was spent on civil matters and 20% on criminal matters.

Prior to that, approximately 90% of my litigation was civil and 10% was criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

During my practice as a lawyer, I tried approximately six to eight cases per year to judgment or verdict in courts of record. I was sole or chief counsel on almost all of them.

During my tenure as a trial judge, I presided over approximately 100 trials that were tried to verdict or judgment.

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

Approximately 80% were jury trials and 20% were non-jury trials.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Since I was a trial judge for five of the last seven years, I have taken the liberty of describing five cases that I litigated as an attorney and five cases that I decided while on the bench. As explained in my answer to Question 15, trial court decisions were not officially published but accounts of those cases I decided that were appealed, may be found in the reported decisions of the Rhode Island Supreme Court.

CASES LITIGATED AS AN ATTORNEY

Save Our Sound Fisheries v. Callaway 387 F. Supp 292 (D.R.I. 1974) I represented a group of fishermen who sought to enjoin the Army Corps of Engineers and its contractor from dumping dredged spoil at an ocean site that included a portion of the plaintiffs' fishing grounds. The suit was based, principally, on the Corps' alleged failure to comply with the public hearing and permit requirements of the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. §§ 1401 et seq. (the "MPRSA") and the Federal Water Pollution Control Act of 1972, 33 U.S.C. §§ 1251 et seq. (the "FWPCA"). An injunction was issued prohibiting the dumping until such time as those requirements were met.

This was one of the first cases in the country litigated under the MPRSA and established the applicability of that statute both to the Corps' activities and to dumping performed after its effective date pursuant to projects authorized before that time. It also established that language in the FWPCA preserving the Corps' authority to maintain navigation did not exempt the Corps from the Act's permit requirements.

The case was substantially resolved on cross motions to dismiss and for summary judgment which were heard in early 1974 by Judge Raymond J. Pettine of the United States District Court for the District of Rhode Island. I was responsible for the litigation of this case and worked with another attorney in my office who represented the plaintiffs in connection with other matters.

Counsel for the other parties were:

Army Corps of Engineers, et als.
Everett A. Sammartino, Esq.
Ass't. U.S. Attorney
208 Federal Building and
United States Courthouse
Providence, Rhode Island
401-528-5477

Great Lakes Dredge & Dock Co.
John Dolan, Esq.
Rice, Dolan & Kershaw
101 Dyer Street
Providence, Rhode Island
401-272-8800

Jane E. Gordon v. Campanella Corporation, 112 R.I. 417, 311 A2d 844 1973. This case arose out of a collision between two automobiles in the vicinity of a bridge that was under construction. The driver of and passengers in each vehicle sued the driver of the other vehicle. They also sued Campanella Corporation, the company constructing the bridge, alleging that it had improperly re-routed traffic. Campanella, in turn, impleaded the subcontractor that was painting the bridge at the time based upon an indemnification clause contained in the subcontract. I represented Campanella.

After presentation of the evidence, the trial justice granted the third party defendant's motion for a directed verdict and the jury returned a verdict for Campanella on the principal complaints. However, the trial justice granted plaintiff Gordon's motion for a new trial and Campanella appealed the granting of both motions. The appeals were denied by the Rhode Island Supreme Court and the case was settled.

This resulted in one of the Rhode Island Supreme Court's most comprehensive and frequently cited statements of the standards for judging a motion for a new trial. In addition, it is one of the few Rhode Island cases dealing with the construction of indemnification clauses.

The case was litigated before Associate Justice Arthur Carrellas (deceased) in the Rhode Island Superior Court on November 29, 1972 - December 3, 1972. I was sole counsel for Campanella throughout the trial and the appeal. Counsel for the other parties were:

Jane E. Gordon
Matthew Ward, Esq.
911 Turks Head Building
Providence, Rhode Island 02903
401-861-6100

Service Contracting, Inc.
A. Lauriston Parks, Esq.
Hanson, Curran & Parks
1210 Turks Head Building
Providence, Rhode Island 02903
401-421-2154

Laura E. Ricard v. John Hancock Mutual Life Insurance Co., et al., 113 R.I. 528, 324 A2d 671 (1974). This was a suit to recover under a mortgage life insurance policy purchased by the plaintiff's deceased husband. The insurance company alleged that, in making application, the decedent had misrepresented the status of his health. Therefore, it refused to pay the mortgage. I represented the mortgagee, Industrial National Bank of Rhode Island (now Fleet National Bank), a co-defendant that was accused of negligence in processing the application and failure to take action to compel payment on the policy. On the day of the trial the bank became the sole defendant when the insurer's motion to dismiss was granted.

During the trial, the bank moved for a directed verdict on the ground that it had no duty to take action to try to compel payment by the insurer. That motion was denied and the bank was prevented from introducing evidence regarding the misrepresentation based upon the wording of its answer. A motion to amend the answer was also denied. The trial resulted in a judgment against the bank.

The bank appealed the denial of both motions to the Rhode Island Supreme Court. The appeal was denied as to the former motion; granted as to the latter motion and a new trial was ordered. Subsequently, the case was settled.

The case resulted in the creation of a duty on the part of a mortgagee to take action against an insurer that refuses to make payment under a mortgage insurance policy. It also resulted in clarification of the circumstances under which pleadings may be amended and is, to this day, one of the leading Rhode Island cases on the subject.

The case was litigated before Associate Justice Eugene Cochran in the Rhode Island Superior Court on June 22, 1972 - June 29, 1972. I was the sole counsel for the bank throughout the trial and the appeal. Counsel for the other parties were:

Laura E. Ricard
Honorable John Bourcier
R.I. Superior Court
250 Benefit Street
Providence, Rhode Island 02903
401-277-3250

John Hancock Mutual Life
Insurance Co.
John Sherlock, Esq.
159 Elmgrove Avenue
Providence, Rhode Island 02906
401-331-9300

Concerned Citizens of Rhode Island, et als. v. Rhode Island Port Authority, et als. (unreported). This was a suit to enjoin a public authority from issuing tax exempt bonds to finance construction of a nuclear power plant. I represented the plaintiffs who lived in the vicinity of a coastal pond which was the proposed site for the plant. A consortium of utility companies that planned to build and operate the plant were also defendants. The basis for the suit was the authority's alleged failure to make findings and obtain approvals required by the state's land use plan and legislation dealing with activities within coastal zones.

The case was litigated early in 1979 in the Rhode Island Superior Court before Associate Justice John Bourcier. A permanent injunction was issued prohibiting the authority from issuing the bonds unless and until the findings in question were made and the requisite permits were obtained. The decision established the obligation of public authorities to ensure that permit and land use requirements are complied with before financing proposed projects.

I was sole counsel for most of the plaintiffs and lead counsel during the litigation. Counsel for the other parties were:

Other plaintiffs

Anthony DeMarco, Esq.
Boyer, Reynolds & DeMarco
170 Westminster Street
Providence, Rhode Island 02903
401-861-5522

R.I. Port Authority

Gregory Benik, Esq.
Hinckley, Allen, Tobin & Silverstein
1500 Fleet Center
Providence, Rhode Island 02903
401-274-2000

Utility Companies

Peter V. Lacouture, Esq.
Tillinghast, Collins & Graham
One Old Stone Square
Providence, Rhode Island 02903
401-456-1200

James A. Jackson, Esq.
Hinckley, Allen, Tobin & Silverstein
1500 Fleet Center
Providence, Rhode Island 02903
401-274-2000

Lincoln Dimensional Tube, Inc. v. CPL Corporation, 117 R.I. 999, 370 A2d 1288 (1977). I represented the plaintiff which sought to recover computer tapes and programs containing virtually all of its business records. The defendant, which was once the plaintiff's parent corporation and had been doing plaintiff's data processing, claimed ownership of the items. An injunction was issued requiring that the tapes and programs be delivered to my client. The defendant appealed to the Rhode Island Supreme Court and sought a stay of the injunction. The stay was denied and the appeal became moot.

This was one of a very small number of Rhode Island cases in which a mandatory injunction has been issued and it has helped clarify the circumstances under which such relief is appropriate. In addition, the reported portion of the case has provided some guidance with respect to the procedure for seeking stays on appeal.

The case was litigated before Associate Justice Ronald Lageux in the Rhode Island Superior Court on February 24, 1977. Judge Lageux is now a judge of the United States District Court for the District of Rhode Island. I was sole counsel for the plaintiff throughout the trial and the appeal. Counsel for the defendant was:

Peter Lawson Kennedy, Esq.
Adler, Pollock & Sheehan, Inc.
2300 Hospital Trust Tower.
Providence, Rhode Island 02903
401-274-7200

Ruth Coppage v. Perry Roberts, et als ____ R.I. ____, 433 A2d 226 (1981). I represented the plaintiff who brought this suit to recover for injuries she received in a multi car collision. She died prior to trial and the executor of her estate was substituted as party plaintiff. The jury returned a verdict for the plaintiff in the amount of $30,000. The plaintiff moved for a new trial unless the defendants agreed to an additur of $60,000. That motion was granted and the defendants appealed. The appeal was denied by the Rhode Island Supreme Court.

This case helped clarify the test to be employed in passing upon a motion for a new trial based on the inadequacy of damages awarded by a jury.

The case was litigated before Associate Justice John McKiernan in the Rhode Island Superior Court sometime in 1979. I was sole counsel for the plaintiff throughout the trial and prepared the brief filed with the Rhode Island Supreme Court. However, I was appointed to the bench before the case was argued on appeal. Counsel for the defendants was:

Anthony De Marco, Esq.
Boyer, Reynolds & DeMarco Ltd.
170 Westminster Street
Providence, Rhode Island 02903
401-861-5522

CASES DECIDED AS A JUDGE

The School Committee of the City of Pawtucket v. Pawtucket Teachers' Alliance Local No. 930 (9/14/83 and 9/27/83 unreported). This began as an action to enjoin an allegedly illegal strike by the teachers in a public school system. After hearing the evidence, I issued the injunction. However, the teachers continued their strike until a settlement was reached with the school committee. I, then, appointed a special prosecutor to initiate criminal contempt proceedings. As a result of those proceedings, I assessed fines against both the union and its individual officers. Both decisions were rendered from the bench.

This case was significant for two reasons. First, to my knowledge, it was the first time in Rhode Island that teachers had actually paid a fine for engaging in an illegal strike. Monetary penalties had been assessed in civil contempt proceedings on two previous occasions but had been waived by the school committees when settlements were reached. Secondly, this was the first time that teachers had been called to account for violating a "back to work" order after a strike had been terminated.

Prior to this case, court orders often were used as bargaining chips by school committees and were ignored by teachers in the expectation that, in order to reach a settlement, the school committee would not seek sanctions. Consequently, Court orders were openly violated; no consequences were suffered by the violators and both public respect for Court orders and the incentive for the parties to bargain in good faith were diminished. This case demonstrated the Court's resolve to independently punish defi-

ance of its orders through the criminal contempt proces. thereby providing an incentive to both teachers and schoo. committees to resolve their differences without resorting to strikes or litigation.

The attorneys litigating this case were:

School Committee	Teachers Alliance
Joseph V. Cavanagh, Esq. (deceased)	Richard A. Skolnik, Esq. Lipsey & Skolnik, Esquires, Ltd. 369 South Main Street Providence, Rhode Island 02903 401-351-7700

Special Prosecutor

Guy J. Wells, Esq.
Gunning, Lafazia & Gnys
410 Turks Head Building
Providence, Rhode Island 02903
401-521-6900

Exeter-West Greenwich Regional School District v. Exeter-West Greenwich Teachers Association and Linda K. Darcy, et als. v. Exeter-West Greenwich Regional School Committee, ___ R.I. ___, 489 A2d 1010 (1985). These cases began as an action by a regional school committee to enjoin an illegal strike by the district's teachers. In refusing to work, the teachers claimed that the school committee was refusing to abide by the terms of a contract agreed to by both parties after arbitration. After hearing the evidence, I concluded that there was merit to the teachers' contention. Accordingly, I issued an order enjoining the strike but made the order conditional upon the school committee's compliance with the contract.

When the school committee chose not to meet the condition a group of parents brought suit to compel them to do so and to open the schools. I issued a mandatory injunction granting the relief sought. Both decisions were rendered from the bench. Both decisions also were appealed to the Rhode Island Supreme Court where they were consolidated with appeals from decisions of the Commissioner of Education regarding related matters.

The Supreme Court upheld issuance of the mandatory injunction. That was significant because this was the first Rhode Island case in which a school committee had been directed to open the schools. The Court also ruled that the doctrine of "clean hands" did not apply in cases of this type; and, therefore, no condition should have been attached to the original injunction. This was the first time that the Court had directly considered that question.

The attorneys litigating this case were:

School District

Bradford F. Gorham, Esq.
Gorham & Gorham
58 Weybosset Street
Providence, Rhode Island
401-421-7680

Teachers Association

Natale L. Urso, Esq.
85 Beach Street
Westerly, Rhode Island
401-596-7751

Linda Darcy, et als

James E. Purcell, Esq.
Tillinghast, Collins & Graham
One Old Stone Square
Providence, Rhode Island 02903
401-456-1200

In the matter of Murrie L. Hubbard III (5/24/83 unreported). This was a police officer's appeal from two decisions of a disciplinary board. One of the decisions was that his employment with the department be terminated. Under the statute creating the board, the officer was entitled to a de novo evidentiary hearing. After conducting such a hearing, I rendered a bench decision.

In addition to providing some guidance in construing what was, then, a relatively new statute, the decision established a police department's right to require its officers to undergo psychiatric examinations when circumstances warrant it.

The attorneys litigating this case were:

Town of North Kingstown	Murrie L. Hubbard III
Sandra J. Blanding, Esq. Revens & DeLuca 946 Centerville Road Warwick, Rhode Island 401-822-2900	Bruce Pollock, Esq. 45 Providence Street West Warwick, Rhode Island 401-822-0300

Blue Cross of Rhode Island, et al. v. Caldarone (11/30/82 unreported) This was an appeal from a decision by the Director of Business Regulation denying part of a requested increase in the premiums charged for a line of medical insurance provided to elderly subscribers. A copy of my decision is enclosed.

The decision is significant because I believe it is the first to construe a statutory provision regarding Blue Cross' reserve requirements. Furthermore, to my knowledge, it is the first to discuss the factors the Director must consider in determining whether a proposed rate is consistent with the public interest.

The attorneys litigating this case were:

Blue Cross	Caldarone
Edwin H. Hastings, Esq. Tillinghast, Collins & Graham One Old Stone Square Providence, Rhode Island 401-456-1200	Lawrence M. Iacoi,Esq. 44 Primrose Hill Road Barrington, Rhode Island 401-246-0451

Stanley Sleboda, Jr., et al. v. Heirs at Law of Rollin A. Harris, et als. ___ R.I. ___, 508 A2d 652 (1986) This was an action to quiet title to real estate. The plaintiff's predecessors had purchased the property at a tax sale approximately thirty yeas previously. The defendants were the successors of the original owners and asserted a statutory right to redeem the property upon payment of the back taxes. The issue presented was whether the statutory procedure for foreclosing the right to redeem was exclusive or whether it also could be foreclosed by adverse possession, as the plaintiffs asserted.

That issue was one of first impression in Rhode Island. It had reached our Supreme Court once before when a Superior Court Justice's decision that the statutory procedure was exclusive was affirmed by an equally divided (2-2) Supreme Court. Interestingly enough, when Sleboda came to trial, that Justice had become a member of the Supreme Court.

Contrary to what that Justice had concluded, I decided that the right to redeem could be foreclosed by adverse possession. A copy of the opinion is enclosed. On appeal, my decision was affirmed by a 3-2 vote of the Rhode Island Supreme Court.

The attorneys litigating this case were:

Plaintiffs

Lewis Rubenstein, Esq. and
Michael B. Mellion, Esq.
100 Medway Street
Providence, Rhode Island
401-351-3700

Defendants

Stephen A. Fanning, Esq.
Edwards & Angell
2700 Hospital Trust Tower
Providence, Rhode Island
401-274-9200

Donald J. Packer, Esq.
Hogan & Hogan
201 Waterman Avenue
East Providence, Rhode Island
401-421-3990

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

During the past year I have been trial counsel for a shareholder of a Rhode Island utility company in his efforts to change several policies of management and acquire a controlling interest in the company through a series of tender offers for its stock. Those efforts spawned several suits in both the state and federal courts regarding my client's right to obtain a list of shareholders; the validity of a plan of reorganization and merger purportedly adopted by the company; the propriety of a proposed contract between the company and a third party for construction of a co-generation facility and whether management's proxy statements and my client's tender offers complied with the securities laws. The litigation regarding my client's right to a list of shareholders has been resolved in his favor. The company's request for a preliminary injunction preventing my client from voting the shares tendered to him has been denied. The remaining litigation is still pending. Some of it may be rendered moot by the fact that the client now has a majority of stock in the company. The case is significant in that, to my knowledge, it is the first hostile takeover attempt for a publicly-held Rhode Island corporation.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **Describe all financial arrangements, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.**

None except that I might continue or convert some of my present group insurance to insure that there is no lapse in my coverage before my coverage as a federal judge would become effective.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

As a matter of course, I will recuse myself from any cases in which I have or could reasonably be viewed as having an interest or in which my present firm acted as counsel during my tenure at the firm.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

No.

4. **Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

No, except for campaigns in which I was a candidate as set forth in my answer to Part I, question 16.

5. **If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?**

I will receive a sum certain that will be fully paid by the time of my departure from the firm. I will not receive any further compensation for my work on pending litigation.

6. Please complete the attached f..nancial net worth statement in detail. (Add schedules as called for.)

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	60,000.00	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	
Listed securities—add schedule	76,000.00	Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	120,000.00
Real estate owned—add schedule	250,000.00	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property	40,000.00		
Cash value—life insurance			
Other assets—itemize:			
Time deposits	35,000.00		
IRA accounts	15,000.00		
		Total liabilities	120,000.00
		Net worth	356,000.00
Total assets	476,000.00	Total liabilities and net worth	476,000.00
CONTINGENT LIABILITIES		**GENERAL INFORMATION**	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule.)	No
On leases or contracts		Are you defendant in any suits or legal actions?	No
Legal Claims		Have you ever taken bankruptcy?	No
Provision for Federal Income Tax			
Other special debt			

Listed Securities 6/29/87

Shares	Company	Approximate Value
200	Shannon Group, Inc.	$ 0.00
100	Xerox	$ 7,800.00
107.394	Fidelity Select Technology	$ 2,700.00
1,000	Citizen's Financial Group	$ 22,000.00
250	Bay State Gas	$ 6,700.00
300	New England Business Service	$ 6,600.00
250	Property Capital Trust	$ 6,000.00
100	Exxon	$ 9,200.00
72.213	Mutual Shares	$ 5,000.00
139.143	Nicholas Fund	$ 5,000.00
178.190	Quest for Value	$ 5,000.00
		$ 76,000.00

Real Estate

Residence -	90 Stone Ridge Drive East Greenwich, RI	$ 250,000.00

III. GENERAL (PUBLIC)

1. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

1. I recognize that under our Constitution each branch of government has a different and distinct function to perform and that the concept of separation of powers requires each to respect the prerogatives of the other branches. I believe that the function of the judicial branch is to resolve specific controversies presented to it by litigants. That should be done by determining the facts pertinent to those controversies and applying to those facts the law as set forth in the Constitution; the statutes enacted by the Congress and the decisions of higher courts. In so doing, the courts should limit their actions to those which are necessary to resolve cases presented to them and should resist any temptation to legislate or administer the laws. Within those parameters, courts have a responsibility to fully and fairly resolve controversies properly before them and to provide appropriately meaningful relief to aggrieved litigants.

2. **What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.**

In my practice, I have always tried to help those in need of legal services irrespective of their ability to pay. In many cases I have provided such services at a reduced rate commensurate with the client's ability to pay. In cases where the services required were not extensive, I have provided them at no charge. In cases where an individual qualified for assistance by a public defender, Legal Services or another public agency, I have referred that individual to the agency and generally contacted an attorney at the agency to verify that the individual's needs would be addressed.

SUPPLEMENTARY RESPONSES TO QUESTIONNAIRE
FOR JUDICIAL NOMINEES

I. Biographical Information (Public)

10. Except for professional organzations listed in my answer to Question No. 9., the only organization to which I currently belong is The Greenwich Club, a local swim club which I joined approximately one month ago.

11. None of my memberships in the bars of courts before which I am authorized to practice has ever lapsed.

12. I have not edited any published material nor have I given any speeches on issues involving Constitutional law or legal policy.

II. Financial Data and Conflict of Interest (Public)

1. None other than income to be received up to the time of my departure from my present firm.

2. Cases in which my present firm acted as counsel during my tenure at the firm and cases involving institutions in which I may have an investment interest.

4. See attached copy of Schedule A of my Executive Personnel Financial Disclosure Report.

SF 278 (Rev. 1/95)
5 CFR Chapter XVI
U.S. Office of Personnel Management

Form approved
OMB No. 3209-0001

Reporting Individual's Name		Page Number		Schedule
Ernest C. Torres	**Assets and Income**	Page Number	1	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse's and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)									Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. D Part I for those assets (including those sold for < $1000)	
		Income (or Asset) (from $1001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	Over $500,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		Income (or Asset) (from $101)	$101 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	Over $100,000			YES	NO
S or DC	Examples: XYZ Common Doe Jones & Smith, Hometown, USA			X	X				X									X						$50,000		X	
			X												partnership income												
1	Bay State Gas common		$	X					X								X										
2	Citizens Fin. Grp. common				X				X								X										NOT
3	Exxon common			X					X								X										
4	New Eng. Bus. Serv. common			X					X							X											APPLIC-
5	Property Cap. Trust common			X					X								X										ABLE
6	Shannon Group common	X							from C							X											
7	Xerox common			X					X								X										
8	Fidelity Sel. Tech. mut. fund		X						X							X											
9	Mutual Shares mut. fund		X						X							X											
10	Nicholas Fund mut. fund		X						X							X											

PREVIOUS EDITION USABLE

FOR OGE USE

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SF 278 (Rev. 1/95)
5 CFR Chapter XIV
U.S. Office of Personal Management

Form Approved
OMB No. 3209-0001

Reporting Individual's Name	Assets and Income	Page Number	2	Schedule A
Ernest C. Torres				

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																		BLOCK D Transactions	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Part I for these assets bought or sold	
		None (or less than $1001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	Over $250,000		Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	Over $100,000			YES	NO
S or DC	Example: XYZ Common / Doe Jones & Smith, Hometown, USA		X		X				X						ptnrship income			X							$60,000		X	
1	Quest Fur Value mut. fund		X						X																			
2	Tillinghast Collins & Graham - Prov., R.I.	X													ptnship income								X					
3	Aetna Life & Cas. Co. Hartford, Ct.	X													earned salary							X						
4 S	State of R.I.														earned income													
5	Fidelity U.S. Gov. Res. IRA			X							X						X											
6 S	Fidelity U.S. Gov. Res. IRA		X								X						X											
7 DC	Fidelity Cash Res. UGMA		X								X						X											
8 DC	Fidelity Cash Res. UGMA			X							X						X											
9 DC	Fidelity Cash Res. UGMA		X								X						X											
10	Citizens Bank MMA				X						X								X									

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SF 278 (Rev. 1/95)
5 CFR Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0001

Reporting Individual's Name		Page Number		
Ernest C. Torres	**Assets and Income**	3		Include A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Term Nominees Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1,000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets								BLOCK C Income															BLOCK D Transactions
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)								Type of Income (X)							Category of Amount of Income (X)									If you checked Sold, Purchased or Exchanged in response to the previous question, please indicate for which transaction(s)
		None (or less than $1001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000			Dividends	Rent	Interest	Capital Gains	Exempt from Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only If "Other" Specified	Date (Mo., Day, Yr.) Only If Honoraria	YES	NO
S or DC	Example: X Y Z Common / Doe Jones & Smith, Hometown, USA		X		X					X						partnership income			X						$50,000		X	
1	Citizens Bank sav. acc't.		X									X					X											
2	Eastland Bank				X							X					X											
3	Fidelity Cash Res. mms			X								X						X										
4	Pawtucket Inst. Sav.			X								X					X											
5	People's Bank MMA	X										X						X										
6	People's Bank sav. acc't.	X										X					X											
7																												
8																												
9																												
10																												

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III. General (Public)

1. I am unable to list specific instances and amounts of time for services referred to in my original answer to Question No. 2 due, in part, to the fact that for six of the last seven years I have not been engaged in the private practice of law having been a trial judge for five of those years.

2. From 1960 to 1963, while a college student, I belonged to a fraternity that was originally a local chapter of Beta Theta Pi, a national fraternity. The national organization limited membership on either racial or religious grounds, I do not recall which. As a result of that limitation, the local chapter to which I belonged severed its affiliation with the national organization. The national organization susequently eliminated the restriction and the affiliation was reestablished.

In addition, during the late 1970's, I was a member of Rotary International for approximately two years. I believe that the national organization limits membership to males. To my knowledge, no female ever applied for or inquired about membership in the local club to which I belonged either before or during the time of my membership nor was the issue of the national organization's policy ever raised. In any event, I did nothing to try to change the national organization's policy.

3. There is no selection commission in my jurisdiction. The Standing Committee on Federal Judiciary of the American Bar Association did recommend me as well qualified for the nomination.

Senator Chafee recommended to the President that I be nominated to fill a vacancy on the United States District Court for the District of Rhode Island. I was subsequently interviewed by representatives of the Department of Justice, the FBI and the American Bar Association, presumably to

determine my fitness to serve as a Federal Judge. It is my understanding that the results of those interviews and related inquiries were then reported to the President who, then, formally nominated me.

4. No.

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

CHAIRMAN
and Member at Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Carrie W. Lattier
One Shell Square
50th Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
One IBM Plaza
Suite 4300
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hansell
P.O. Box 80268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Winter Bldg.
2 Dexter Avenue
P.O. Box 78
Montgomery, AL 36104

DISTRICT OF COLUMBIA CIRCUIT & FEDERAL CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 Eye Street, N.W.
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
3005 Coral Road
Fallbrook, CA 92028

STAFF DIRECTOR
Wayland E. Sundet, Jr.
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5685

STAFF ASSISTANT
Diane Livingston
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5701

June 24, 1987

JUDICIARY COMMITTEE
'87 JUN 29 AM 9 52

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: ERNEST C. TORRES
United States District Court
for the District of Rhode Island

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Ernest C. Torres for appointment as Judge of the United States District Court for the District of Rhode Island.

A substantial majority of our Committee is of the opinion that Mr. Torres is "Well Qualified" for this appointment. The minority found him to be qualified.

Sincerely,

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

JAMES A. PARKER

Birth:	January 8, 1937	Houston, Texas
Legal Residence:	New Mexico	
Marital Status:	Married	Florence Fisher Parker 2 children
Education:	1959	Rice University B.A. degree
	1962	University of Texas School of Law LL.B. degree
Bar:	1962	Texas
	1963	New Mexico
Experience:	1962 - present	Modrall, Sperling, Roehl, Harris & Sisk, P.A. Law Clerk 1962-1963 Associate 1963-1967 Partner 1968 to present
Office:	P.O. Box 2168 1000 Sunwest Building Albuquerque, New Mexico 87103 505 848-1804	
Home:	1113 Madison, N.E. Albuquerque, New Mexico 87110	

To be United States District Judge for the District of New Mexico

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

James A. Parker

2. Address: List current place of residence and office address(es).

Office: Modrall, Sperling, Roehl, Harris & Sisk, P.A.,
P.O. Box 2168
1000 Sunwest Building,
Albuquerque, New Mexico 87103,
(505) 848-1804

Residence: 1113 Madison, N.E.
Albuquerque, N.M. 87110
(505) 268-5104

3. Date and place of birth.

January 8, 1937 Houston, Texas

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married August 26, 1960 to Florence Fisher Parker. My wife is a housewife and is self-employed as a fashion coordinator. Her primary client is Kistler-Collister, Inc., Albuquerque, New Mexico.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

(a) College: Rice University, Houston, Texas--Bachelor of Arts Degree 1959 (Mechanical Engineering major).

(b) Law School: University of Texas School of Law, LLB 1962 (Subsequently changed to J.D. degree).

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations,

nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

June 1959 -- August 1959: I was employed in the Physics Department at the University of Texas, Austin, Texas as a research assistant and terminated that position when I entered law school.

June 1960 -- August 1960: I was employed as a law clerk by Tom Arnold, Esquire now of the firm of Arnold, White & Durkee, 750 Bering Drive, Houston, Texas.

November 1960 -- May 1961: I was employed by the Texas Legislature, State Capitol, Austin, Texas, doing legislative drafting.

July 1961 -- June 1962: I was employed by the Texas Law Review, University of Texas School of Law, 2500 Red River, Austin, Texas as an editor.

July 1962 -- to present: I have been employed by Modrall, Sperling, Roehl, Harris & Sisk, P.A. or its predecessor initially as a law clerk and subsequently as a practicing attorney upon admission to practice in New Mexico and I have been a partner in the predecessor firm and shareholder and director since incorporation.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Two years Army Reserve Officer Training in school 1954-55--no active service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Honor Roll -- undergraduate and law school;

Order of the Coif;

Texas Law Review, Articles Editor -- 1961-1962;

Chancellors;

Honor Council;

President, Phi Delta Phi Legal Fraternity;

Consul Awardee;

Quiz Master;

Graduated first in law school class of June, 1962.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association -- 1963 to date - Economics of Law Practice Section;

Texas Bar Association -- 1962 to date;

New Mexico Bar Association -- 1963 to date -- I serve or have served in the following positions and on the following committees:

Board of Bar Commissioners -- 1982-1983

Liaison Committee, New Mexico State Bar and New Mexico Medical Society (Chairman of Bylaws and Statement of Joint Principles Committee) approximately 1978 to date;

Commission on Professionalism -- 1986 to date;

New Mexico Medical-Legal Malpractice Screening Panel (member and on occasion substitute chairman) -- approximately 1975 to date;

New Mexico State Bar Foundation Fellow -- approximately 1980 to date;

Albuquerque Bar Association -- 1963 to date. I was chairman of the Judicial Selection Committee -- from approximately 1975 to 1985 and was a member of the Board of Directors during the early 1970's. In earlier years I served as chairman of various committees.

Albuquerque Lawyers Club.

New Mexico Supreme Court Task Force on Lawyer Advertising -- I was appointed by the New Mexico Supreme Court as one of the original members of the task force to develop rules of professional conduct relating to lawyer advertising and served as Chairman of the Central District Committee (Albuquerque) from inception to 1983.

New Mexico Supreme Court Task Force on the Legal Profession -- I was appointed in 1984 by the New Mexico Supreme Court to serve on this task force which revised, at the Court's request, the New Mexico Code of Professional Responsibility which resulted in the adoption, with modifications, of the ABA Model Rules of Professional Conduct.

Tenth Circuit Judicial Conference. I have been a member at several times and am a member at present.

American Board of Trial Advocates -- I served as President of the New Mexico Chapter -- 1984 to 1985 and I have been a member of the National Board of Directors from 1985 to date and have served as

Chairman of the National Public Relations Committee from 1986 to date.

American Judicature Society -- approximately 1978 to date.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong (such as civic, educational "public interest" law, etc.).

Albuquerque Goals Committee;

Rice University Alumni Association -- Albuquerque chairman;

Rice University Fund Council;

University of Texas Law School Association -- Regional Director;

United Way of Albuquerque -- Chairman, Professional Division, 1984;

University of New Mexico Presidential Scholarship Fund;

Cathedral of St. John (Episcopal);

Tennis Club of Albuquerque;

Albuquerque Chamber of Commerce (through law firm membership);

Albuquerque Junior Chamber of Commerce -- legal counsel in 1960's.

American Society of Mechanical Engineers (during engineering school);

American Board of Trial Advocates

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Texas - September 17, 1962

Supreme Court of New Mexico - January 15, 1963

United States District Court, District of New Mexico - 1963

United States Court of Appeals, Tenth Circuit - 1963

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written. Please supply a copy of any significant speech by you on constitutional law or

national policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"Individual Refusals to Sell in Regulated Industries", Texas Law Review, Vol. 41, No. 2 (Dec. 1962).

13. Health: What is the present state of your health? List the date of your last physical examination.

Good.

Yes. April 16, 1987: Wake Forest University Cardiopulmonary Performance Laboratory; May 16, 1984 Dr. Eugene Castiglia, Albuquerque, New Mexico, general physical examination.

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a law clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1960 - Arnold, White & Durkee, P.C.
P. O. Box 4433
Houston, Texas 77210
Summer Law Clerk

1961 - Texas Legislature, House of Representatives
Austin, Texas
Legislation Draftsman

1961 - Texas Law Review, University of Texas
School of Law
2500 Red River
Austin, Texas
Editor

1962 - Modrall, Sperling, Roehl, Harris & Sisk, P.A.
P.O. Box 2168,
1000 Sunwest Building
Albuquerque, New Mexico 87103

Law Clerk - July 1962 to January 1963, when admitted to practice in New Mexico

Associate attorney - 1963-1967

Partner (and subsequently shareholder and director) 1968 to date.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

The general character of my practice has been civil litigation and an office practice involving real estate, commercial and probate work. There have been some changes over the years as indicated in the following chronological schedule:

1962-1968 -- Although in these earlier years of my practice most of my time was spent on civil litigation, most of which was insurance defense litigation, the nature of my work was quite varied and included:

Indigent Criminal Defense Work. I was assigned to defend numerous indigent criminals during my first two years of admission to practice before the United States District Court. In addition, I defended numerous indigent criminals in the New Mexico State District Courts and during the third and fourth years of my practice handled several state court appeals for indigent criminals.

Bankruptcy. I did a significant amount of work on behalf of creditors in bankruptcy court including preparation and filing of creditors claims and appearances on behalf of creditors in bankruptcy court.

Mortgage Foreclosure Proceedings. From 1963 to 1965 I worked on numerous mortgage foreclosures from inception through sale.

Title Examination. During these earlier years I handled several quiet title suits and also assisted in examination of mineral titles (primarily oil and gas).

Wills and Estates. I prepared numerous wills that did not involve complex estate tax problems and also handled the probate of estates and was involved in litigating a few will contests.

Corporate and Business. I handled the incorporation of a number of small businesses, prepared contracts, monitered compliance with governmental regulations and advised on general business and corporate matters other than taxation.

Real Estate. I prepared documents relating to real estate transactions including real estate contracts, deeds, mortgages, purchase agreements, promissory notes, etc.

Administrative. I had limited experience in appearances before administrative agencies, both state and federal, including the New Mexico Oil and Gas Commission, the New Mexico Corporation Commission (Superintendent of Insurance), the New Mexico Game and Fish Department, the New Mexico Racing Commission, the United States Postal Service, the National Labor Relations Board, and the Social Securities Administration. I have also appeared before the Councils of various cities and before the City of Albuquerque Environmental Protection Commission.

Banking Law. I researched and advised on questions of banking law and the Uniform Commercial Code and handled litigation in the nature of defense of claims against banks as well as collection suits on behalf of the banks.

Arbitration. I represented clients in several arbitration matters, including contract disputes, but mainly involving uninsured motorist claims against insurance companies.

1968-1975 -- The nature of my practice changed somewhat in that civil litigation consumed a greater percentage of my time, I no longer performed certain legal work such as preparation of wills and the probate of estates and my work in areas such as

bankruptcy, title examinations, and administrative proceedings was much less than it had been previously.

1975-1987 -- Civil litigation remained the area in which I worked primarily, but I continued to have a significant volume of real estate and business related work. Also, the nature of the civil litigation changed in that a greater part of it was commercial litigation and the defense of professional liability claims, with a decreasing volume of other types of insurance defense work.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Clients for whom I have worked primarily are financial institutions, insurance companies, business owners, ranchers and other individuals. To a lesser extent I have done work for energy companies and some personal injury claimants. The area in which I have concentrated my practice is civil litigation.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearance in court varied, describe each such variance, giving dates.

Regularly. There has not been much variance in the frequency of my court appearances during the last five years although my work on larger cases and duties in firm management may have reduced my court appearances during these years compared to prior years.

2. What percentage of these appearances was in:

a) federal courts: Approximately 15-20 percent

b) state courts of record: Approximately 80-85 percent

c) other courts: Very little, although I have handled some arbitrations.

3. What percentage of your litigation was:

a) civil: 100 percent since approximately 1967;

b) criminal: During the first five years of my practice criminal defense comprised approximately ten to fifteen percent of my practice.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Over twenty-five years I have tried approximately one hundred twenty cases to verdict or judgment. I have been the sole counsel on approximately fifty percent of these cases, was chief counsel or associate counsel with other attorneys on the other fifty percent.

5. What percentage of these trials was:

a) jury: Approximately 20 percent

b) non-jury: Approximately 80 percent

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a) the date of representation;
b) the name of the court and the name of the judge or judges before whom the case was litigated; and
c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Glen and Mary Brooks, Personal Representatives of the Estate of Mark Allan Brooks, deceased v. American Motors Corporation, Jeep Corporation and American Motors Sales Corporation, United States District Court for the District of New Mexico, No. CIV 84-1319 JB. This was a suit for wrongful death based on products liability and deceptive advertising theories in which I represented the parents of a college student who was killed while riding as a passenger in a Jeep CJ-5 that rolled over. The case involved significant and interesting discovery issues, especially disclosure of attorneys' responses to annual accounting audit inquiries. The lawsuit was settled in July, 1985 following entry of an order requiring defendants to disclose responses by counsel who are defending numerous Jeep rollover cases throughout the country to annual audit inquiries by accountants for the defendants. The trial judge was the Honorable Juan G. Burciaga, Federal Building, 500 Gold Avenue, S.W., Albuquerque, New Mexico, (505) 766-3064. New Mexico counsel for the defendants were Paul Butt and John Klecan, Butt, Thornton & Baehr, P. O. 3170, Albuquerque, New Mexico, (505) 884-0777.

Norman Brown, Robert Boissiere and Lucille Jones v. John Doe I, John Doe II and Doe and Doe, a partnership, First Judicial District Court (Santa Fe County), State of New Mexico, No. SF-81-2356 C. This is a suit pending against Attorneys Thomas Catron, Fletcher Catron and the law firm of Catron, Catron & Sawtell of Santa Fe, New Mexico who I am defending. The suit

arises out of the trial of a quiet title action by the firm of Catron, Catron & Sawtell. The trial of this professional liability action will involve, in essence, two trials -- a retrial of the quiet title action and this suit for professional liability. The case raises certain questions -- lawyers' standards of care, when the statute of limitations commences on legal malpractice claims, and dates for assessment of alleged damages -- that are not well defined in New Mexico law. The case should be scheduled for trial before the end of the year, but at present counsel are awaiting the designation of a new trial judge, the most recent judge assigned to the case having recused himself. Plaintiffs are represented by Stephen Durkovich, P. O. Box 26581, Albuquerque, New Mexico, (505) 247-2367.

Fern Borden Dujardin v. Abbott Laboratories, et al., (over 200 additional defendants), Second Judicial District (Bernalillo County), State of New Mexico No. CV-85-02100. This was the first suit filed in New Mexico against manufacturers of diethalstilbestrol alleging serious injuries to the plaintiff that resulted from her mother's ingestion of DES during the mother's pregnancy with the plaintiff. It raised for the first time in New Mexico numerous theories of shared liability. I represented Abbott Laboratories and was one of the lead defense counsel up to the time that the claims against Abbott Laboratories and various other manufacturers were settled. The case is still pending as to some of the defendants who did not settle. The case was filed in March 1985 and the claims against Abbott Laboratories and various other defendants were settled in early 1987. The case is pending in Division XV before the Honorable H. Richard Blackhurst before whom there were several hearings prior to settlement of the claims against Abbott Laboratories. Among the many defense counsel, the following are the ones who were more active than others in the defense of the case: Peter H. Johnstone, Keleher & McLeod, P. O. Drawer AA, Albuquerque, New Mexico, (505) 842-6262 and William C. Madison, Montgomery & Andrews, P. O. Box 26927, Albuquerque, New Mexico, (505) 242-9677.

Rodney L. Harschlip v. V. Arvizu, Board of Education of Grants Municipal School District No. 3, Hardy Stewart, Eddie L. Pena, Garland Taylor, Lynn Head, June Hale, Wilfred Toya and Alfonso Medina, United States District Court for the District of New Mexico, No. CIV-76-710. This was a lawsuit for violation of constitutional rights and civil rights involving First Amendment freedom of speech issues. I was the trial attorney for all of the defendants -- the Grants School Board, the individual members of the Board and individual administrators. The case involved significant constitutional issues. The case was tried before a jury in 1978 and the jury returned a verdict for the plaintiff, but because of the relatively small amount of the award, no appeal was taken. The trial judge was the Honorable E. L. Mechem, Federal Building, 500 Gold Avenue, S.W., Albuquerque, New

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Mexico, (505) 766-2541. Counsel for the plaintiff were Jerry Wertheim and John Wentworth, Jones, Snead, Wertheim & Wentworth, P. O. Box 2228, Santa Fe, New Mexico, (505) 988-5521.

Homestake Mining Company v. Enerdyne Corporation, United States District Court for the District of New Mexico, No. CIV-77-609. This was a contract dispute between energy companies relating to a lease of uranium properties and involving primarily implied covenants to develop, royalty provision disputes and antitrust claims. Of particular significance was a review of the law of implied covenants and the New Mexico statutes relating to the filing of uranium claims. The case was settled before trial in 1980. I represented Homestake Mining Company as its lead counsel. Counsel for Enerdyne Corporation was Russell G. Moore, Keleher & McLeod, P. O. Drawer AA, Albuquerque, New Mexico, (505) 842-6262.

Rhoda Hopper and the United States of America v. Neil Pivar, M.D., Jack Nobel, M.D., Lee Meier, and Holy Cross Hospital, Eighth Judicial District (Taos County), State of New Mexico No. 85-227 CV. This was a suit based on various theories of medical malpractice resulting in brain damage and other serious injuries. It involved complex medical problems of anesthesia and causation and from a legal standpoint involved issues of comparative fault and derivative liability theories on which there is no developed law. I represented Defendant Neil Pivar, M.D., an anesthesiologist who was alleged to be liable on the basis of an employment relationship with Defendant Lee Meier, a certified registered nurse-anesthetist who actually administered the anesthesia. The case was scheduled for jury trial during April 1987 and was just recently settled. Leon Karelitz, P. O. Box 160, Colfax County Courthouse, Raton, New Mexico, (505) 445-5584, was the trial judge. The plaintiffs were represented by William Ferguson, P. O. Box 2007, Albuquerque, New Mexico, (505) 243-5566 and the defendants were represented by Bruce D. Black, Campbell & Black, P. O. Box 2208, Santa Fe, New Mexico, (505) 988-4421 (Defendant Jack Nobel, M.D.), Ranne Miller, Miller, Stratvert, Torgerson & Schlenker, P. O. Box 25687, Albuquerque, New Mexico, (505) 842-1950 (Defendant Lee Meier) and Alfred L. Green, Jr., Butt, Thornton & Baehr, P. O. Box 3170, Albuquerque, New Mexico, (505) 884-0777 (Holy Cross Hospital).

Richard Hubbell, Elizabeth Hubbell and Mark Hubbell v. Frank A. Hubbell Company and Frank A. Hubbell, Second Judicial District Court (Bernalillo County), State of New Mexico, No. CV 85-07822. This is a suit in which the primary remaining claim to be tried is a statutory claim for the fair value of stock of minority dissenting shareholders. (Originally the suit included many additional claims and counterclaims involving corporate mismanagement, waste of corporate assets, and breach of directors' and officers' duties,

which have now been eliminated from the lawsuit.) Originally I was counsel for Frank A. Hubbell, individually, who has now been dismissed as a party to the lawsuit. I am now lead counsel for the remaining defendant, Frank A. Hubbell Company. The case will involve significant legal issues relating to the definition of "fair value" of corporate stock and whether a discount for the minority nature of the stock interest will be allowed. The law on the discount issue is not well developed. The case is pending and trial should take place before the end of the year. The trial judge is the Honorable Gerard W. Thomson, Division V. Counsel for the plaintiffs is Floyd Wilson, Johnson and Lanphere, P. O. Box 3238, Albuquerque, New Mexico, (505) 889-4000. Other New Mexico counsel who earlier were involved in the case as co-counsel for the defendants were: Wayne C. Wolf, Civerolo, Hansen & Wolf, P. O. Drawer 887, Albuquerque, New Mexico, (505) 842-8255 and William B. Keleher, Keleher & McLeod, P. O. Drawer AA, Albuquerque, New Mexico, (505) 842-6262.

Mack Mead and Southwest Baking Company v. First New Mexico Bankshare, Security National Bank and Charles Joplin, Fifth Judicial District (Chaves County), State of New Mexico, No. CV 80-211. This was a suit involving claims of breach of contract for business lending, economic duress, disclosure of confidential information, slander and unfair trade practices. It involved complex questions of banking law and lending in addition to tort claims. The case was tried during April 1982 before the Honorable Paul Snead in Chaves County, New Mexico. I represented Defendant First New Mexico Bankshare and was the lead attorney among the defense counsel. The case concluded with a verdict in favor of all defendants on all of the claims. Counsel for the plaintiffs was Thomas A. Sandenaw, Jr., Weinbrenner, Neumeyer & Sandenaw, P. O. Drawer O, Las Cruces, New Mexico, (505) 524-8624. Counsel for Defendant Security National Bank was Russell D. Mann, Atwood and Malone, P. O. Drawer 700, Roswell, New Mexico, (505) 622-6221. Counsel for Defendant Charles Joplin was James E. Casados, P. O. Box 1189, Albuquerque, New Mexico, (505) 243-7848.

North Hills Properties, Inc. v. Western Bank Building, Ltd. and Joaquin DeMonet, United States District Court for the District Court of New Mexico, No. CIV-83-1239 HB. This was a suit involving claims of fraud and negligent misrepresentation with respect to the sale of a major office building in Albuquerque, New Mexico by the defendants to the plaintiff, North Hills Properties, Inc., which I represented. The case involved significant issues during discovery including whether a foreign (Dutch) corporate executive of the plaintiff could be required to submit to deposition in New Mexico and issues of enforcement of a settlement agreement. The case was settled, the settlement was disputed, the dispute was resolved and the case was eventually dismissed in November 1984. The trial judge was the Honorable Howard C. Bratton, 421 Gold Avenue, S.W., Albuquerque, New Mexico, (505)

766-1129. New Mexico counsel for the defendants was Dennis E. Jontz, Civerolo, Hansen & Wolf, P. O. Drawer 887, Albuquerque, New Mexico, (505) 842-8255.

Schwartzman Packing Company v. Hartford Steam Boiler Inspection and Insurance Company, United States District Court, District of New Mexico, affirmed on appeal, 423 F.2d 1170 (10th Cir. 1970). This was a suit involving the interpretation of a steam boiler insurance policy as it related to the steam boiler system of Schwartzman Packing Company, who I represented. The case was tried before a jury which found all issues in favor of Schwartzman Packing Company. The case was affirmed on appeal. The trial judge was the Honorable H. Vearle Payne. Counsel for Defendant Hartford Steam Boiler Inspection and Insurance Company were William C. Briggs and Robert M. St. John, Rodey, Dickason, Sloan, Akin & Robb, P. O. Box 1888, Albuquerque, New Mexico, (505) 765-5900.

Stromberg's and H. Cook Sporting Goods Company v. Victor Gruen & Associates, Dickman, Pickens & Bond, Winrock Enterprises, Inc. and Winrock Development Company, Winthrop, Rockefeller, W. E. Harber and Thomas Walsh, United States District Court, District of New Mexico, No. 7227. This was a suit for property damages and business interruption resulting from flooding of the premises of the plaintiffs who I represented. The case involved an important issue regarding exculpatory provisions in leases and proper architectural design of shopping centers and offsite water sources. After the United States Court of Appeals for the Tenth Circuit reversed a summary judgment granted in favor of the defendants on the basis of the exculpatory provision of the lease [384 F.2d 163 (10th Cir. 1967)], I tried the case with my partner George T. Harris, Jr. in federal court, before a jury resulting in a substantial jury verdict for both plaintiffs which was not appealed. The trial judge was the Honorable H. Vearle Payne. Defendant Victor Gruen & Associates was represented by John Tittman and Patrick Hurley, Keleher & McLeod, P. O. Drawer AA, Albuquerque, New Mexico, (505) 842-6262 and the Winrock defendants were represented by Byran G. Johnson and Eric D. Lanphere, Johnson and Lanphere, P. O. Box 3238, Albuquerque, New Mexico, (505) 889-4000.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In the public area of legal activities some of the more significant matters on which I have worked have included consulting with judges of the Bernalillo County State District Court relating to revision of its rules (I was the attorney consultant to the judges when this was done in the early 1970's), conducting a

school for poll watchers and poll judges during the 1972 general election (I was in charge of the educational program), counseling and representing indigent criminals, both those for whom I was assigned as the primary counsel and others whose representation were assigned to other attorneys, consulting the Republican Party of New Mexico, along with other attorneys, in regard to reapportionment legislation and lawsuits, performing numerous functions for the New Mexico State Bar Association and the Albuquerque Bar Association as a committee member, committee chairman, bar commissioner and director, including for ten years chairmanship of the Albuquerque Judicial Selection Committee which screened applicants for judicial positions, and serving on task forces appointed by the New Mexico Supreme Court relating to the development of rules and regulations governing lawyer advertising and professional responsibility. In the private area some of the more significant legal activities that I have pursued include counseling clients regarding real estate matters, business contracts, compliance with state and federal regulations regarding employment matters, consulting on technical problems in litigation such as radiation injury cases, because of my engineering background, title examinations, and law office management. (I served as the last managing partner of our firm prior to its incorporation and conversion to a committee management system.)

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Describe all financial arrangements, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.

Modrall, Sperling, Roehl, Harris & Sisk, P.A. Upon withdrawal from this law firm of which I am a member I will receive the fair market value of the shares of stock that I own in the professional association. In addition, pursuant to my employment agreement with Modrall, Sperling, Roehl, Harris & Sisk, P.A., upon withdrawal from the firm I will receive my salary due through the effective date of termination plus any discretionary bonuses declared prior to the date of termination plus an additional bonus in the amount of a proportionate part of the bonus that I would have received if I had continued to work until the end of the firm's fiscal year. In addition, upon withdrawal from the firm I will receive deferred compensation in an amount equal to the highest amount of compensation that I received during the five years immediately preceding withdrawal payable in 36 equal monthly installments beginning in the month following the month of withdrawal from the firm. Also, upon withdrawal from the firm I will receive all vested amounts under the profit sharing plan and rights under group term life insurance.

Lobo-Campus Pharmacy, Inc. This is a New Mexico corporation in which I formerly was a shareholder. I have sold all of my stock in the corporation to Daniel Hernandez in consideration for a promissory note, the principal balance of which currently is $16,858.

Florida River Ranch is a continuing cattle ranching and cattle feeding partnership business. I participate in partnership income or losses annually. There is no written partnership agreement. My interest is 25%.

Parker-Townsend Ranch Company is a continuing livestock ranching and feeding partnership business. My wife and I participate in partnership income or losses annually. There is no written partnership agreement. (Our interest is 50%.)

I am the testamentary beneficiary of 50% of the residuary assets of the Emily H. Parker Estate which probably will be closed during 1988 with the assets to be distributed at that time.

In regard to stocks, bonds, partnership interests and other securities please see the schedules attached to the financial statement provided in answer to question C.2, below.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

   I plan to recuse myself on all cases involving the firm of which I am a member, Modrall, Sperling, Roehl, Harris & Sisk, P.A. I will recuse myself with respect to any cases involving entities in which I have an ownership interest or individuals with whom I am or have been associated in business or investment ventures.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No. However, I do plan to continue to participate in management decisions in the partnerships in which I have partnership interests and in regard to my other investments.

4. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No.

5. If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?

   Modrall, Sperling, Roehl, Harris & Sisk, P.A. Upon withdrawal from this law firm of which I am a member I will receive the fair market value of the shares of stock that I own in the professional association. In addition, pursuant to my employment agreement with Modrall, Sperling, Roehl, Harris & Sisk, P.A., upon withdrawal from the firm I will receive my salary due through the effective date of termination plus any discretionary bonuses declared prior to the date of termination plus an additional bonus in the amount of a proportionate part of the bonus that I would have received if I had continued to work until the end of the firm's fiscal year. In addition, upon withdrawal from the firm I will receive deferred compensation in an amount equal to the highest amount of compensation that I received during the five years immediately preceding withdrawal payable in 36 equal monthly installments beginning in the month following the month of withdrawal from the firm. Also, upon withdrawal from the firm I will receive all vested amounts under the profit sharing plan and rights under group term life insurance.

6. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

   My financial net worth statement with schedules is attached.

III. GENERAL (PUBLIC)

1. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe that the proper role of a United States District Court Judge is to apply, where unambiguous, the written law expressed in the federal and state constitutions, federal and state legislation and administrative regulations, to look to the intent of the framers of the constitution or to the intent of Congress or state legislatures or administrative agencies in reaching a correct result where the written law may be ambiguous and to follow precedent, in existence at the time of decision, of the United States Supreme Court, the circuit courts of appeals and the state courts, where appropriate, in deciding issues between litigants. In regard to the specifics of "judicial activism" mentioned above, I believe a trial court judge should tend toward resolving specific disputes between litigants and should decide issues narrowly on the facts of a particular case instead of in a broad manner that might create problems in other disputes with different factual bases. I believe the trial court judges should enforce procedural and evidentiary rules and should observe jurisdictional requirements as stated in legislation or case precedent. A trial court judge should avoid, where possible, assuming administrative roles with continuing oversight responsibilities when that can reasonably be handled by other branches of government. A trial court judge should not presume to legislate on issues that Congress or state legislatures have addressed or may address. Since a

federal trial court judge is appointed and not elected, a federal trial court judge should not, in deciding issues between litigants, extend rulings to address broad policy issues that are better left to elected representatives of the people. A federal trial court judge must recognize limitations on judicial authority and understand that there may be perceived wrongs for which remedies are better left to the legislative as opposed to the judicial branch of government.

2. What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.

I have represented without compensation, more than 50 individuals charged with crimes in both federal and state courts. This included representation of individuals in trial courts and involved jury trials of some cases, plea bargains in some cases and the dismissal of charges short of trial in others. In addition, I have represented individuals on appeals from criminal convictions where they had other legal counsel at trial. (As a representative example, see State v.Sanchez, 78 N.M. 284, 430 P.2d 781 (1967)). Several of the indigents who I represented on criminal charges had various types of civil legal problems that I handled free of charge. And, some had personal problems for which I provided assistance such as obtaining employment or counseling in regard to marital or familial problems. For many years I donated legal services to the Albuquerque Bar Association's legal aid program and in that regard represented, without compensation, clients who could not afford to pay for legal services. This included matters such as advising regarding landlord-tenant problems, representation of clients in divorce proceedings, defense of debtors in claims by creditors and in one instance, defense of a young woman sued as a result of an automobile accident. Independent of bar sponsored programs, I have represented without charge, numerous individuals who simply could not afford to pay attorneys. Examples of this include successfully defending on a theory of usurious interest a claim by a loan company against an elderly woman, defending a young man against a claim by a college which had withdrawn his athletic scholarship, straightening out title to the home of an older woman whose only asset was the home of modest value, assisting a young woman with divorce and child custody in a situation where her husband had been rendered incompetent as the result of an accident. In all of these instances the individuals for whom I provided free legal services were members of minority groups and could not afford to pay for legal services. If the Committee desires, I will seek to obtain consent from some or all of these present or former clients to disclose their identities. I have never refused to provide legal services to individuals who have

requested my help on the ground that they were unable to pay for the services.

In addition to services I have provided on an individual basis, I have worked on numerous programs beneficial to the public generally and the disadvantaged public in particular in connection with various bar association programs. For example, while I served as a member of the New Mexico Board of Bar Commissioners, some of the programs that were initiated and promoted involved legal services in rural communities and legal programs for the elderly. During the time of my service as a director of the Albuquerque Bar Association the initial legal aid society was formed.

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	122	000		Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured	72	000	
Listed securities—add schedule	761	700		Notes payable to relatives			
Unlisted securities—add schedule	50	200		Notes payable to others	92	000	
Accounts and notes receivable:				Accounts and bills due	3	000	
Due from relatives and friends				Unpaid income tax			
IRA ACCOUNTS	43	251		Other unpaid tax and interest			
DEFERRED COMPENSATION	29	500		Real estate mortgages payable—add schedule	1,263	760	
Real estate owned—add schedule	1,995	368		Chattel mortgages and other liens payable			
Real estate mortgages receivable	817	692		Other debts—itemize:			
Autos and other personal property	52	000					
Cash value—life insurance							
Other assets—itemize: FUNDS	235	564					
GOV. TAX EXEMPT BONDS	200	000					
FRACTIONAL MINERAL INTEREST	156	000					
LIVE STOCK	84	250		Total liabilities	1,551	760	
LIMITED PARTNERSHIPS	49	200		Net worth	2,443	955	
Total assets	3,995	615		Total liabilities and net worth	3,995	615	
CONTINGENT LIABILITIES				**GENERAL INFORMATION**			
As endorser, comaker or guarantor	100	000		Are any assets pledged? (Add schedule.) SEE: "REAL ESTATE MORTGAGES PAYABLE"	YES		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	22	000					
Other special debt							

CASH ON HAND AND IN BANKS

Depository	Account No.	Balance
Dean Witter/Sears Liquid Asset Fund, Inc.	026986	$6,000.00
Sunwest Bank of Albuquerque	01-4560-2	$5,000.00
Sunwest Bank of Albuquerque	06-9008-2	$13,000.00
Prudential-Bache Securities	039704	$71,000.00
Prudential-Bache Securities	034290	$27,000.00

LISTED SECURITIES

Shares	Corporation
300	American Ecology Corporation
200	American Telephone & Telegraph Company
959	Argonaut Group, Inc.
200	Browning-Ferris Industries Corporation
150	Caterpillar Tractor
2000	Continental Illinois Corp.
70	Exxon Corporation
320	Gulf States Utilities Company
453	Houston Industries, Inc.
100	International Business Machines Corporation
6000	Interwest Medical Corporation
400	Kerr-McGee Corporation
100	Manufacturer Hanover Corporation
200	Morse Shoe, Inc.
400	Phillips Petroleum Corporation
11181	Sunwest Financial Services Incorporated
939	Teledyne, Inc.
18	Texas Utilities Electric Company ($4.24 preferred stock)

UNLISTED SECURITIES

Shares	Corporation
10,000	Delta Petroleum Corporation
25,000	Olympic Mining Corporation
37	Piper Petroleum Corporation

IRA ACCOUNTS

Prudential-Bache Account No. (James A. Parker)

Prudential-Bache Account No. (Florence Parker)

Sunwest Bank of Albuquerque Account No. (James A. Parker)

Sunwest Bank of Albuquerque Account No. (Florence Parker).

ACCOUNTS & NOTES RECEIVABLE

(Due from others -- deferred compensation)

Prudential-Bache Securities Account in the name of Modrall, Sperling, Roehl, Harris & Sisk, P.A. for the benefit of James A. Parker	$ 29,500.00

NOTE RECEIVABLE
(DOUBTFUL)

Maker	Purpose	Principal Balance Due
Daniel Hernandez	Purchase of Lobo-Campus Pharmacy stock	$ 16,858

REAL ESTATE OWNED

	Ownership Interest
1. Improved Real Estate	
Residence, Albuquerque, New Mexico	100%
Six-Plus-One Joint Venture (office building 601 San Pedro, NE, Albuquerque, New Mexico)	18%
F-P-S Triplex, Albuquerque, New Mexico	33-1/3%
Mountain cabin, Taos, New Mexico	50%
2. Unimproved Real Estate	
27.71 acres, 9918 Steubner-Airline Drive, Houston, Texas	50%
Approximately 72 acres between Cypresswood Drive and Cypress Creek bounded on west by T. C. Jester Boulevard, Harris County, Texas.	50%
5.195 acres fronting on Louetta Road, Harris County, Texas	25%
5.147 acres fronting on Louetta Road, Harris County, Texas	40% approx.
8.73 acres - intersection of Highway 35 and FM 521, Brazoria County, Texas	25%
764 acres - Live Oak County, Texas (Dobie Ranch	25%
315.57 acres - Chilili, Bernalillo County, New Mexico	25%
1.276 acres Plantation Drive, Clute, Texas	50%
0.866 acres - Dixie Drive, Clute, Texas	50%
1.15 acres - Dixie Drive, Clute, Texas	50%

Unimproved Real Estate, continued

10 acres - North Albuquerque Acres	50%
15 acres - North Albuquerque Acres	50%
128.66 acres - Chilili, Bernalillo County, New Mexico	50%
40 acres - Paradise Hills, Albuquerque, New Mexico	100%
Lot 1, Block 9 - Volcano Cliffs, Albuquerque New Mexico	100%
Lot 13, Block 9 - Volcano Cliffs, Albuquerque New Mexico	100%
Lot 14, Block 9 - Volcano Cliffs, Albuquerque, New Mexico	100%
Lots 15 and 16, Block 1 - North Albuquerque Acres	25%
Lot 9, Block 4 - North Albuquerque Acres	50%
8.75 acres - Pino Arroyo Property, Albuquerque, New Mexico	20%

3. Fractional Mineral Interests

Royalty interests, overriding royalty interests and working interests in the states of Arkansas, Colorado, Louisiana, New Mexico, Oklahoma and Texas.

REAL ESTATE MORTGAGES RECEIVABLE

Mortgagor	Property	Principal Balance Due
Odell/Marley	Mile-Hi Ranch, Ramon, New Mexico	$ 609,075.00
Sonney/Wright, Inc.	Ramon Ranch, Ramon, New Mexico	$ 208,417.00

FUNDS

Shares	Fund
93	Prudential-Bache Municipal Investment Trust Fund
5428	Prudential-Bache Equity Fund
3027	Prudential-Bache Growth Opportunity Fund
3169	Prudential-Bache Money Market Assets
160	Prudential-Bache Energy Income Fund

GOVERNMENT TAX EXEMPT BONDS

Shares	Description	Maturity Date
50,000	Alaska GO	04/01/89
50,000	Albuquerque Loans to Lenders	04/01/93
50,000	Cook County, Illinois GO	11/01/91
50,000	Oregon GO	01/01/91

LIMITED PARTNERSHIP INTERESTS

Ampet Partners I, Ltd.

Ampet Partners II, Ltd.

Ampet Partners III, Ltd.

Big Investment Group, Ltd.

Fogelman Southeast Properties, Ltd.

Portage II, Ltd.

Portage IV, Ltd.

Pumpjack II, Ltd.

Roger Cox Equity Investors, Ltd.

CONTINGENT LIABILITIES

1. Guaranties

   A. Modrall, Sperling, Roehl, Harris & Sisk, P.A. credit line -- Sunwest Bank of Albuquerque. Limited guaranty of $50,000.

   B. Roger A. Parker Promissory Note -- Sunwest Bank of Albuquerque. Limited guaranty of $50,000.

2. Provision for federal income tax -- estimated quarterly payments of $11,500 each due on 1987 income tax on September 15, 1987 and on January 15, 1988.

NOTES PAYABLE

1. Notes payable to banks -- unsecured:

   Sunwest Bank of Albuquerque (livestock note) -- $72,000.00

2. Notes payable to others:

   Estate of Emily H. Parker -- $50,000.00

   Estate of Emily H. Parker -- $40,000.00

ACCOUNTS AND BILLS DUE

Mastercard.....$2,500.00

Visa.....$ 500.00

REAL ESTATE MORTGAGES PAYABLE

Mortgagee	Property	Principal Balance Due
John Hancock Life Insurance	Residence -Albuquerque, New Mexico	$ 14,000
Hinds	Taos mountain cabin, Taos, New Mexico	$ 3,000
Williamson/ Hyson	Florida River Ranch, Durango, Colorado	$ 138,642
Lucas/Wall	Mile-Hi Ranch, Ramon, New Mexico	$ 383,337
Simpson/Bray	Ramon Ranch, Ramon, New Mexico	$ 156,119
Gardner	Paradise Hills (40 acres) Albuquerque, New Mexico	$ 189,620
Crossland Mortgage	FPS Triplex	$ 42,440
Johnson Trust	15 lots North Albuquerque Acres (undivided one-fourth interest)	$ 14,300
Sunwest Bank	601 San Pedro Property	$ 96,000
New Mexico National Bank	15 lots North Albuquerque Acres (undivided one-fourth interest)	$ 15,900
Dove	1 Lot North Albuquerque Acres	$ 25,000
Castillo	2 Lots North Albuquerque Acres, Albuquerque, NM	$ 10,600
Brent	1 Lot Volcano Cliffs Albuquerque, New Mexico	$ 13,800

Wright	1 Lot Volcano Cliffs Albuquerque, New Mexico	$ 28,500
Shutes	1 Lot Volcano Cliffs Albuquerque, New Mexico	$ 21,800
Presley Company	Pino Arroyo Property (8.75 acres) Albuquerque, New Mexico	$ 110,702

SECURITIES HELD IN NAME OF
JAMES A. PARKER AS GUARDIAN FOR PAMELA E.
PARKER (DAUGHTER)

Shares	Corporation
1521	American Ecology Corporation
365	Argonaut Group, Inc.
200	Browning-Ferris Industries, Inc.
200	Exxon Corporation
530	Hasbro, Inc.
48	International Business Machines Corporation
10,000	Olympic Mining Corporation
200	Outboard Marine
400	Phillips Petroleum Corporation
200	Public Service Company of New Mexico
100	Sears Roebuck & Company
511	Sunwest Financial Services, Inc.
365	Teledyne, Inc.

Financial Disclosure Report

Page 1

Reporting Status (Check Appropriate Box)			Date of Appointment, Candidacy, Reporting Period (Mo., Day, Yr.)	Termination Date (If Applicable) (Month, Day, Year)
☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination File			July 10, 1987	
Last Name	First Name and Middle Initial			
Parker	James A.			
Position for Which Filing	Department or Agency (If Applicable)			
Judge, United States District Court				
Address (Number, Street, City, State and ZIP Code)		Telephone No. (Include Area Code)		
500 Fourth Street, N.W., Albuquerque, N.M. 87102		505-848-1804		
Name and Address of Present Employer (If Self-Employed, Indicate)				
None				
Name of Spouse's Employer	Did You Intend to Create a Qualified Blind Trust?			
United States Senate Committee on the Judiciary	☐ Yes	☒ No		

James A. Parker — July 14, 1987

Reporting Periods

Incumbents Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part II of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

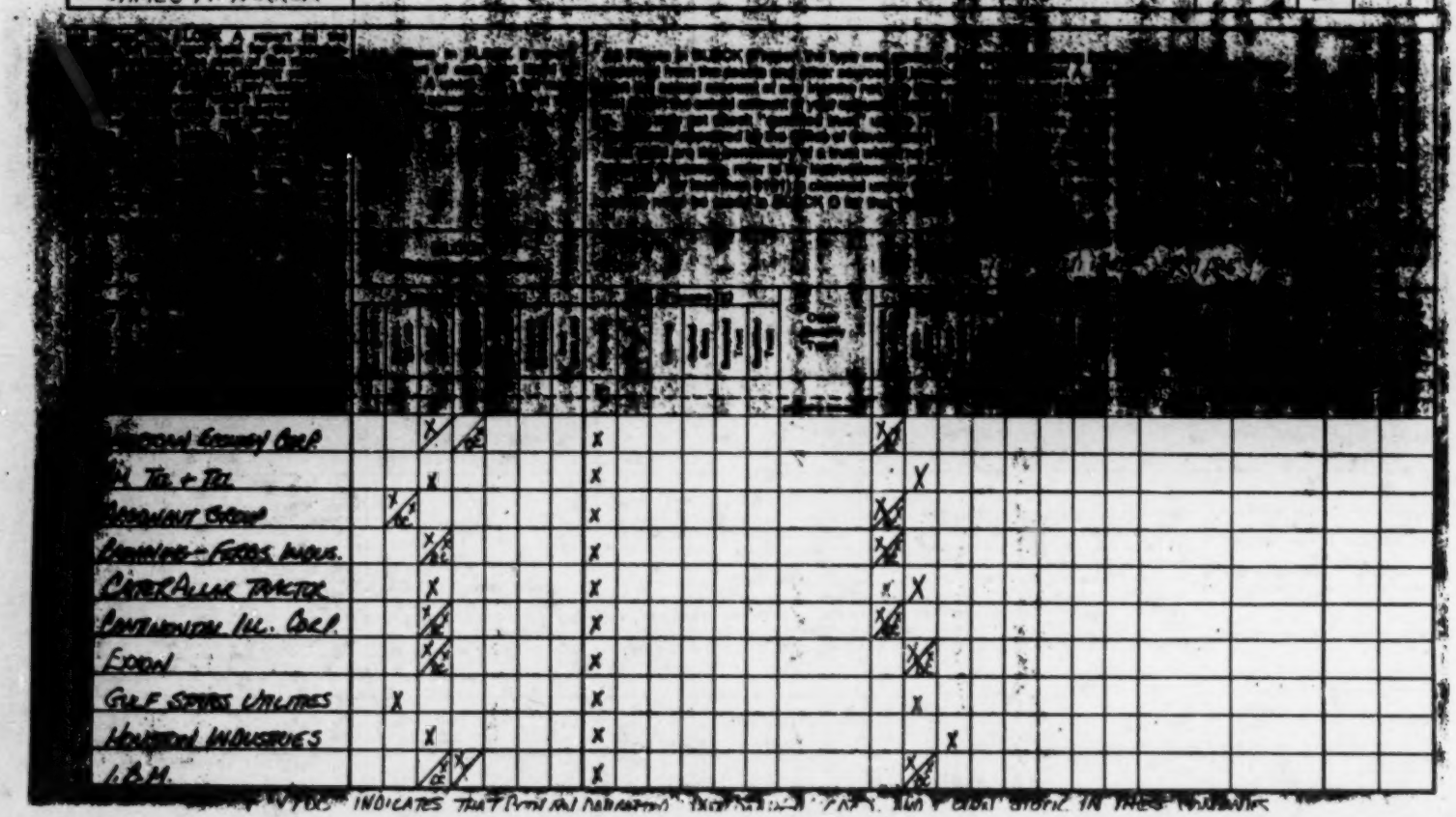
Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, B, C, and Part I of D.

Schedule A: The reporting period includes BLOCK C and Incumbent Year BLOCK A of the preceding calendar year and Termination year BLOCK A to the date of termination. BLOCKS B and C: Date of asset holding must be reported.

☐ (Check box if comments are continued on the reverse side)

Reporting Individual's Name	Assets and Income	Page	2	Reported
JAMES A. PARKER				



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Reporting Individual's Name	Assets and Income	Page Number		Schedule A
JAMES A. PARKER			3	

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes, but is not limited to, savings, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA plans, assets of certain trusts, commodities futures, personal business and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Investment and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income																		BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse's and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)											If yes, complete Block B Part I for those assets indicating those sold for $ less.	
		None (or less than $1001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	$500,001-$1,000,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Identify Type)	None (or less than $201)	$201-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Necessary	YES	NO
DC	Spouse: X Y Z Common Dan Jones & Smith, Hometown, USA			X					X						monthly income			X								X	
1	INTERWEST MED. CORP		X													X											
2	KERR-McGEE CORP.				X												X										
3	MANF. HANOVER CORP.		X														X										
4	MORSE SHOE, INC.			X													X										
5	PHILLIPS PETROL.			X/AE												X/AE											
6	SUMMIT FINANCIAL				AE			X									AE			1/	X						
7	TELEDYNE, INC.						AE	X									X/AE										
8	TEXAS UTILITIES	X							X							X											
9	DELTA PETROLEUM		X													X											
10	OLYMPIC MINING			AE	X											X/AE											

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Reporting Individual's Name: JAMES A PARKER

Assets and Income | Page Number 4 | Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets								BLOCK C Income															BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse's(S) and your dependent child (DC). NONE ☐		Category of Value (X)								Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If you, complete Sched. B Part I for these assets including those sold for a loss.	
		None (or less than $1001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	$500,001-$1,000,000	Over $1,000,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$1,000,000	Over $1,000,000			YES	NO
1 DC	Bank: XYZ Common Broker: Doe Jones & Smith, Hometown, USA			X	X					X						(royalty income)			X						$50,000		X	
2	PIPER PETROLEUM				X					X								X										
3 DC	HASBRO, INC.			DC X						X								DC X										
4 DC	OUTBOARD MARINE			DC X						X								DC X										
5 DC	AUB SERV CO. N.M.		DC X							X								DC X										
6 DC	SEARS-ROEBUCK		DC X							X								DC X										
7 DC	SUNWEST BANK # 4494				DC X							X								DC X								
8 DC	" " #7591				DC X							X									DC X							
9 DC	" " #314-0				DC X							X								DC X								
10 DC	DEAN WITTER LIQUID ASSET		DC X							X								DC X										
11 DC	PRUDENTIAL BACHE					DC X				X										DC X								

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Reporting Individual's Name: JAMES A. PARKER

Assets and Income

Page Number: 5

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $200 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA plans, assets of certain trusts, commodities futures, personal business and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and exempt holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that t...

Investments and Transactions Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $10000?

	BLOCK A Assets & Income Source	BLOCK B Valuation of Assets							BLOCK C Income																		BLOCK D Transactions Yes	BLOCK D Transactions No
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X): None (or less than $1001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	Over $500,000	Type of Income (X): Dividends	Rent	Interest	Capital Gains	Royalties/ Trusts	Qualified Trust	Other (Specify Type)	Category of Amount of Income (X): None (or less than $201)	$201-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$1,000,000	Over $1,000,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If you completed Block D Part I for these assets indicating these sold for a loss.	
S DC	Spouse/DC: X Y Z Company, Des Jones & Sons, Hometown, USA			X	X				X									X									X	
															priority income										$50,000			
	DOW NATL LIQUID ASSETS			X					X								X											
	SUNWEST BANK #4560			X							X									X								
	" " 9008			X							X								X									
	PRUDENTIAL BACHE 39704						X				X										X							
	" " "				X				X											X								
	" " 34209				X						X									X								
	" " "			X					X										X									
	LOBO PHARMACY NOTE*				X						X						X											
	A-B MA ACCT #11466				X						X								X									
S	" " " #11474			X							X								X									

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Reporting Individual's Name: JAMES A. PARKER

Assets and Income

Page Number: 6

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes, but is not limited to, savings, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal business and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and common holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Terminations Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse's and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Necessary	If yes, complete Block B Part I for those assets producing those gains for a loss.	
		None (or less than $1001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	Over $500,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $201)	$201-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
1 (a)	Examples: XYZ Common			X	X				X									X								X	
	Dow Jones & Bank, Hometown, USA			X											Quarterly Income									$50,000			
1	SUNWEST IRA 86-B			X							X							X									
2 (a) 5	" " 406-S			X							X							X									
3	SIX-PLUS-ONE JOINT VENTURE					X									JOINT VENTURE									LOSS 1986			
4	AMAET I			X											LIMITED PARTNERSHIP			X						1594			
5	AMAET II			X											"				X					3165			
6	AMAET III		X												"									LOSS 1986			
7	PORTAGE II														"									"			
8	PORTAGE III														"									"			
9	PUMPJACK II														"		X							701			
10	FOGELMAN ACQUISITIONS				X										"									LOSS 1986			

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Reporting Individual's Name: JAMES A. PARKER

Assets and Income

Page Number: 7

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $200 in income during the reporting period. Examples include but is not limited to: common stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA plans, assets of pension trusts, commodities futures, personal trusts and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and exemption holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Investments and Transactions Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse's and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Over" Specified	Date (Mo., Day, Yr.) Only if Necessary	If yes, complete Block B Part I for those assets (including those held jointly) if not done in Part A.	
	None (or less than $1,001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	Over $500,000	Dividends	Rent	Interest	Capital Gains	Royalties	Trusts		None (or less than $201)	$201-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
Spouse DEBT XYZ Common [redacted]			X	X				X									X								
ROGER OAK EQUITY INVESTORS			X											LIMITED PARTNERSHIP									LOSS 1986			
B.I.G. LTD		X												"	X											
HBO JOINT VENTURE		X												JOINT VENTURE	X											
FPS TRIPLEX				X										"	X											
FCNB HOUSTON # 1042498				X					X	X	X			MINERAL INCOME						X			30546			
FLORIDA RIVER RANCH							X							AGRICULTURE									LOSS 1986			
PARKER-TOWNSEND RANCH CO							X			X	X			"						X			39,989			
71(6) ACRES HARRIS CO, TEX							X							UNDIVIDED OWNER	X											
72 ACRES BRAZORIA CO, TEX						X								"	X											
70A " LIVE OAK CO, TEX					X									"		X							REPORTED UNDER FCNB HOUSTON #1042498			

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Reporting Individual's Name: JAMES A. PARKER

Assets and Income

Page Number: 8

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period, and (b) each source of income (other than $1000 and less from any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to: salaries, stocks, bonds, the dividends, bank accounts, real property, mutual funds, annuities, IRA funds, trusts of persons, corporations, businesses, partnerships, trusts, commodities futures, personal loans, rents and partnership interests. Include your spouse's and dependent children's assets and sources of income unless you elect to not. See instructions for filing on bank accounts and exemption holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Investment and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $10000?

BLOCK A Assets & Income Sources			BLOCK B Valuation of Assets								BLOCK C Income																		BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse's(S) and your dependent child (DC). NONE ☐			Category of Value (X)								Type of Income (X)						Other Specific Types	Category of Amount of Income (X)										Annual Amount (Only if "Other" Specified)	Date (Mo., Day, Yr.) (Only if Honoraria)	If yes, complete Block B, Part I for those assets indicating those sold for a loss.	
			None (or less than $1001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	$500,001-$1,000,000	Over $1,000,000	Dividends	Rent	Interest	Capital Gains	Royalties	Trust		None (or less than $201)	$201-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$1,000,000	Over $1,000,000			YES	NO
	Spouse	XYZ Common Trust Assets & Income, Alexandria, VA			X						X									X										
																		pending income												
		(2) 365 ACRES, BOWMAN CO., ND					X											UNDIVIDED OWNER	X											
		(3) MINERAL INTERESTS				X																						NO INCOME TO DATE			
		(4) AMPET I		X									X							X										
		(5) " II		X									X								X									
		(6) " III	X										X							X										
	DC	AMELIA E. PARKER TRUST ASSETS																												
	DC	(1) SUNWEST BANK ACCOUNT				X							X									X								
	DC	(2) 365 ACRES, BOWMAN CO., ND	NONE				X											UNDIVIDED OWNER	X											
	DC	(3) MINERAL INTERESTS				X																						NO INCOME TO DATE			
	DC	(4) AMPET I		X									X							X										

Reporting Individual's Name: JAMES A. PARKER

Assets and Income

Page Number: 9

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, clients, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and certain holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Investments and Transactions Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets	BLOCK C Income																								BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse's(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										Actual Amount Only if "Over" Specified	Date (Mo., Day, Yr.) Only if Necessary	If you, complete Sched. D Part I for those assets including those sold for a loss.	
	None (or less than $1001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	Over $500,000	Dividends	Rent	Interest	Capital Gains	Royalties	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$1,000,000	Over $1,000,000			YES	NO
S KYZ Common; Dan Jones & Black, Hampton, USA			X		X			X									X							$99,999		X	
1 165 ACRES BERNALILLO CO, N.M.						X								UNDIVIDED OWNER	X												
2 40 ACRES ALBUQUERQUE, N.M.							X							"	X												
3 40 ACRES BERNALILLO CO, N.M.							X								X												
4 15 ACRES BERNALILLO, CO.						X									X												
5 ALASKA GO BONDS						X				X										X							
6 ALBUQUERQUE GO BONDS						X				X										X							
7 COOK CO. ILL GO BONDS						X				X										X							
8 OREGON GO BONDS						X				X										X							
DC AGNES A. PARKER TRUST ASSETS:																											
DC 1/2 (1) SUNWEST BANK ACCOUNT				X						X								X									

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Reporting Individual's Name: JAMES A. PARKER

Assets and Income

Page Number: 10

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to: employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, trusts of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and certain holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources			BLOCK B Valuation of Assets							BLOCK C Income																BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse's(S) and your dependent child (DC). NONE ☐			Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Over" Specified	Date (Mo., Day, Yr.) Only if Necessary	If yes, complete Subd. D Part I for these assets including those sold for a loss.	
			Income (or less than $1001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	Over $500,000	Dividends	Rent	Interest	Capital Gains	Royalties	Qualified Trust		Income (or less than $201)	$201-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
S DC	Spouse plan	XYZ Common Elm Jones & Smith, Hamilton, USA			X	X				X									X								
1	(5) AMAFT II			X								X							X								
2	(6) AMAFT III		X									X						X									
3	MCDALL LAW FIRM															SALARY MED BENES								X	304,761		
4 S	KISTLER-COLLISTER, INC															CONSULT FEES			X						1620		
5	1986 SALE TELEDYNE STOCK												X											X			
6 DC	" " " "												X											X			
7	MINERAL ROYALTY INCOME:															MINERAL ROYALTIES											
8	(1) ASARITA OIL CO.															"		X							212		
9	(2) COMADO OIL CO															"		X							975		
10	(3) HYDEST ENERGY															"			X						3961		

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Reporting Individual's Name: JAMES A PARKER

Assets and Income | Page Number 11 | Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $200 in income during the reporting period. This includes but is not limited to: savings accounts, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, annuities, IRA plans, assets of certain trusts, commodities futures, personal business and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and certain holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Investment and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets	BLOCK C Income																								BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse's and your dependent child (DC). HONE ☐	Category of Value (X)							Type of Income (X)							Other (Specify Type)	Category of Amount of Income (X)									Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Necessary	If yes, complete Item 6, Part II for those assets indicating those sold for a loss.	
		None (or less than $1001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	$500,001-$1,000,000	Dividends	Rent	Interest	Capital Gains	Royalties	Partnership Share	Qualified Trust		None (or less than $201)	$201-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$1,000,000	Over $1,000,000			YES	NO
	Spouse/DC: XYZ Common One Acres & Gulch, Rawlings, USA			X					X										X									X	
1	(4) YTR PETROLEUM			X												MINERAL ROYALTY		X								192			
2	(5) IM PETROLEUM															"	X									169			
3	(6) LEGACY EXPLORATION															"	X									578			
4	(7) MARQUEE CORP.															"			X							2073			
5	(8) PENN ZOIL															"		X								101			
6	(9) TESORO PETROLEUM															"				X						8288			
7	WHITMAR EXPL. CO. N.L.															WORKING INTERESTS										NONE YET RECEIVED			
8	(1) PEA RIDGE PROSPECT				X											"										"			
9	(2) GUM LOG PROSPECT				X											"										"			
10	(3) MORELAND PROSPECT				X											"										"			

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Reporting Individual's Name: JAMES A. PARKER

Assets and Income

Page Number: 12

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000, and (b) any other asset or source of income which generated over $200 in income during the reporting period. The instructions list 9 asset types (savings, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, annuities, IRA plans, trusts of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and certain holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets								BLOCK C Income															BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse's and your dependent child (DC). NONE ☐	Category of Value (X)								Type of Income (X)							Other Specify Type	Category of Amount of Income (X)									Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Necessary	If yes, complete Schedule B, Part I for those assets meeting these sale or trade tests	
	None (or less than $1001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	$500,001-$1,000,000	Over $1,000,000	Dividends	Rent	Interest	Capital Gains	Royalties	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$1,000,000	Over $1,000,000			YES	NO
SP DC Spouse 2001 XYZ Common Stock Shares in Stock, Hawaiian, USA			X		X				X										X					$50,000		X	
(4) SO. TINKER PROSPECT			X													WORKING INTEREST									NONE YET RECEIVED			
AMPET S.E. DURANGO PROSPECT			X													CARRIED W. INTEREST									"			
RAD AND REP TRUSTS INHITMAR EXPL. CO. W.I.																WORKING INTEREST									"			
(1) DOA BLOCK PROSPECT			X													"									"			
(2) GUM LOG PROSPECT			X													"									"			
(3) MORELAND PROSPECT		X														"									"			
(4) SO. TINKER PROSPECT			X													"									"			
AMPET MANDOLA PROSPECT		X														"									"			
RAD AND REP TRUSTS AMPET MANDOLA PROSPECT		X														"									"			
CONOCO, INC.		X														"									155			

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Reporting Individual's Name: JAMES A. PARKER

Assets and Income

Page Number: 13

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for investment purposes at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $200 in income during the reporting period. The following need not be listed: (a) personal residence, personal bank accounts, household furnishings and personal effects, automobiles, boats, etc. (unless held for rental or investment purposes), bank accounts, savings bonds, life insurance, mutual funds, retirement accounts, IRA plans, shares of pension funds, cooperative interests, personal trusts, noncommercial interests, personal liabilities and personality interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and certain holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Terminations Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																		BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse's and your dependent child (DC). NONE ☐	Category of Value (X): None (or less than $1001)	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	Over $500,000	Type of Income (X): Dividends	Rent	Interest	Capital Gains	Capital Gains Taxable	Qualified Trust	Other (Specify Type)	Category of Amount of Income (X): None (or less than $201)	$201-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount (Only if "Other" Qualified)	Date (Mo., Day, Yr.) (Only if Honolulu)	If YES, complete Block B, Part I for those assets indicating Gains and $2,500 Income	
																										YES	NO
Basic 2101 XYZ Company Ohio Series A Stock, Hamilton, USA			X	X				X										X					$50,000		X	
MARDAM EXPLORATION														MINERAL ROYALTIES									756			
OKLAHOMA BANK ACCOUNT		X								X						X										
RAUSCHER PIERCE ACCOUNT	X									X						X										
2a " " "										X						X										
2b TITLE USA	X									X						X										
3 LIVESTOCK (STEERS)					X									ANTICIPATED									NONE YET RECEIVED			
4 PHYDROTUAL BACHE DEFERRED COMP ACCT				X						X								X								
5																										
6																										
7																										

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Reporting Individual's Name
JAMES A. PARKER

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1	SUNWEST BANK OF ALBUQUERQUE, N.A.		PROMISSORY NOTE (LIVESTOCK LOAN)	1987	925	180 DAYS			X		
2	ESTATE OF EMILY H. PARKER, KERRVILLE, TEXAS		" "	1986	8.5	7 YEARS		X			
3	" " " " " "		" "	"	"	"		X			
4	HUGH WILLIAMSON RICHARD NIXON	DURANGO, COLORADO	REAL ESTATE MORTGAGE NOTE (FLORIDA RIVER RANCH)	1981	10	11 YEARS				X	
5	LADORA LUCAS HARLAN IRBY	RAMON, NEW MEXICO	REAL ESTATE MORTGAGE NOTE (MILLER RANCH - PARKER-TOWNSEND CO.)	1976	8	14 YEARS					X
6	RALPH SIMPSON WENDELL BRAY	" "	REAL ESTATE MORTGAGE NOTE (RAMON RANCH - PARKER-TOWNSEND ANCHOR)	1980	9	13 YEARS				X	

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Reporting Individual's Name: JAMES A. PARKER

Page Number: 15 | Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value ($) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
SP DEP	First District Bank, Washington, DC John Jones, 100 J St., Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware Promissory note	1991 1979	12% 14%	30 yrs. on demand	X		X		
1	601 CORPORATION, 601 SAN ACACIO, N.E. ALBUQUERQUE, N.M.	REAL ESTATE MORTGAGE NOTE (SIX PLUS ONE JOINT VENTURE)	1981	10	4 YEARS			X		
2	PRESLEY COMPANY, 1109 CARLISLE, N.E. " "	REAL ESTATE PURCHASE CONTRACT (8.75 ACRES - ALBUQUERQUE)	1986	10	11				X	
3	GLENN GARDNER, 30030 RAINBOW CREST, AGOURA HILLS, CA.	REAL ESTATE PURCHASE CONTRACT (40 ACRES BERNALILLO Co.)	1986	10	9 YEARS				X	
4	CROSSLAND MTG. CO., ALBUQUERQUE, N.M.	REAL ESTATE MORTGAGE NOTE (LOS TRIPLEX)	1986	9.5	29 YEARS		X			
5	JOHNSON TRUST, OTTOWA, KANSAS	REAL ESTATE PURCHASE CONTRACT (1/4 INTEREST 15 LOTS)	1985	11	3 YEARS	X				
6	N.M. NATIONAL BANK, ALBUQUERQUE, N.M.	" " " "	1985	10.5	3 YEARS	X				

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for continuing participation in an employee benefit plan, leaves of absence, continuation of payments by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☐

Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/88	Doe Jones & Smith, Home town, USA	7/79 partnership agreed.

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Reporting Individual's Name: JAMES A. PARKER

Page Number	16	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Type of Applicable	Category of Amount or Value ($)				
						$10,000 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $500,000	Over $500,000
S (or) DP	First District Bank, Washington, DC John Jones, 100 J St., Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware Promissory note	1981 1970	12% 10%	30 yrs. 2 years	X		X		
1	G. DOVE, P.O. Box 473, SANTA MARIA, CA.	REAL ESTATE PURCHASE CONTRACT (LOT(S) — ALBUQUERQUE)	1986	10	9 YEARS		X			
2	G. CASTILLO, 1233 7TH ST., ALBUQUERQUE, N.M.	"	"	12	9 YEARS	X				
3	R. BRENT, 1501 WALLACE, CLOVIS, N.M.	"	"	10	9 YEARS	X				
4	B. WRIGHT, 907 PEARSON, ROSWELL, N.M.	"	"	9	9 YEARS		X			
5	D. SHUTES, 1601 SEA KNIGHT, LAKE HAVASU CITY, ARIZ.	"	"	10			X			
6	SUNWEST BANK OF ALBUQUERQUE, N.A.	LIMITED GUARANTIES OF NOTES ROGER PARKER, NORMAN LANDRAM	1987		DEMAND			X		

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for (1) employment, leaves of absence, continuation of pay by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☐

Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Pursuant to partnership agreement, will receive capital account & partnership share calculated on services performed through 11/88	(Name of each person with whom you have an agreement or arrangement)	3/79 (partnership agreement)
PURSUANT TO SHAREHOLDER AGREEMENT AND EMPLOYMENT	MODRALL, SPERLING, ROEHL,	SEPT. 1980
AGREEMENT, WILL RECEIVE CAPITAL INVESTMENT, SALARY PLUS	HARRIS + SISK, P.A.	
BONUSES TO DATE OF TERMINATION, ONE YEAR'S COMPENSATION	P.O. BOX 2168	
PAID OVER 36 MONTHS, DEFERRED COMPENSATION ACCOUNT	ALBUQUERQUE, N.M.	
AT PRUDENTIAL BACHE (LISTED ON PAGE 12, ABOVE)		

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Reporting Individual's Name
JAMES A. PARKER

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MODRALL LAW FIRM, P.O. BOX 2168, ALBUQUERQUE, N.M.	LAW FIRM	SHAREHOLDER - DIRECTOR	SEPT. 1980	DATE
PARKER-TOWNSEND RANCH CO, 1512 W. 8TH, ROSWELL, N.M.	RANCHING PARTNERSHIP	GENERAL PARTNER	DEC. 1976	"
FLORIDA RIVER RANCH, DURANGO, COLORADO	" "	" "	MAY 1981	"

MODRALL LAW FIRM, P.O. BOX 2168, ALBUQUERQUE, N.M.	LEGAL SERVICES
CLIENTS OF MODRALL LAW FIRM WHO HAVE PAID OVER $5,000 TO IT FOR SERVICES PERFORMED	
ABBOTT LABORATORIES, ABBOTT PARK, ILLINOIS	LEGAL SERVICES (LITIGATION)
[illegible] TO: JAMES NESCI	
U.S. ARGONAUT INS. CO., P.O. BOX 9887, PHOENIX, ARIZ.	" " "

Reporting Individual's Name: JAMES A. PARKER

Page Number	18	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Excludes positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/80	6/82
Doo Jones & Smith, Hometown, USA	Law Firm	Partner	7/70	11/80

Part II
Compensation in Excess Of $5000
Paid by One Source

All Filers and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

Source (Name and Address)	Brief Description of Duties
Doo Jones & Smith, Hometown, USA	Legal services
Mega University gifted of Doo Jones & Smith Hometown, USA	Legal services in connection with university construction
(3) GLEN + MARY BROOKS, 10412 KAREN, N.E. ALBUQ, N.M.	LEGAL SERVICES (LITIGATION)
(4) KATHRYN COLLISTER, 4203 AVE. LA RESOLANA, N.E. " "	" " (GENERAL BUSINESS)
(5) COLONIAL PENN INS. Co.	" " (LITIGATION)
C/O BAYARD, HANDELMAN + MURDOCH	
P.O. BOX 25130 — 19899 WILMINGTON, DEL.	
ATTN: BEN WETZEL	

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SF 278 (Rev. 1/95)
5 CFR Chapter XIV
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0001

Reporting Individual's Name
JAMES A. PARKER

Page Number	19	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Nat'l Assn. of Rock Collectors, WY, WY	Non-profit education	President	6/88	6/93
Doo Jones & Smith, Hometown, USA	Law firm	Partner	7/76	11/88

Part II
Compensation in Excess Of $5000
Paid by One Source

All Filers and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

Source (Name and Address)	Brief Description of Duties
Doo Jones & Smith, Hometown, USA	Legal services
Notre University affiliate of Doo Jones & Smith, Hometown, USA	Legal services in connection with university construction
(6) CROP HAIL MANAGEMENT, 602 PARK POINTE DRIVE, GOLDEN, COLORADO	LEGAL SERVICES (LITIGATION)
(7) CROWN LIFE INS. CO., 120 BLOOR ST. EAST, TORONTO, CAN. ATTN: WAYNE ADWORTS, SENIOR COUNSEL	" " "
(8) HCA PARTHENON INS., P.O. BOX 550, NASHVILLE, TENN. ATTN: DEBBIE McGEE	" " "

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Reporting Individual's Name: JAMES A. PARKER

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Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Example: Nat'l Assn. of Real Estate Editors, NY, NY	Non-profit education	President	6/69	6/80
Example: Day Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/80

Part II
Compensation in Excess Of $5000
Paid by One Source

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NONE ☐

Source (Name and Address)	Brief Description of Duties
Example: Day Jones & Smith, Hometown, USA	Legal services
Example: Major University (client of Day Jones & Smith) Hometown, USA	Legal services in connection with university construction
(9) HUBBARD BROADCASTING, 3415 UNIV. AVE., ST. PAUL, MINN. ATTN: JOHN T. McDONOUGH	LEGAL SERVICES (GENERAL BUSINESS)
(10) FRANK A. HUBBELL CO., P.O. BOX 4287, TOPEKA, KAN. ATTN: FRANK A. HUBBELL	" " (LITIGATION)
(11) INS. CORP. AMERICA, P.O. BOX 56308, HOUSTON, TEX. ATTN: BOB HALLMARK	" " "

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Reporting Individual's Name:
JAMES A. PARKER

Form Approved
OMB No. 3209-0001

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Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Example	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/93	6/95
Example	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/79	11/88

Part II
Compensation in Excess Of $5000
Paid by One Source

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NONE ☐

	Source (Name and Address)	Brief Description of Duties
Example	Doe Jones & Smith, Hometown, USA	Legal services
Example	Mines University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
(12)	KISTLER-COLLISTER + Co., P.O. BOX 8670, ALBUQ., N.M.	LEGAL SERVICES (GENERAL BUSINESS)
	ATTN: DOUGLAS H. COLLISTER	
(13)	LONDON INTERNATIONAL U.S. HOLDINGS	" " (LITIGATION)
	P.O. BOX 415, LITTLE FALLS, N.J.	
	ATTN: ROBERT KAISER	
(14)	MERCEDES-BENZ NORTH AMERICA, INC.	" " "

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SF 278 Rev. 1/95
5 CFR Chapter XIV
U.S. Office of Personal Management

Reporting Individual's Name: JAMES A. PARKER

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Part I
Positions Held Outside U.S. Government

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NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/80	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/76	11/80

Part II
Compensation in Excess Of $5000 Paid by One Source

All Filers and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Alumni University school of Doe Jones & Smith Hometown, USA	Legal services in connection with university construction
	P.O. BOX 350, MONTVALE, NEW JERSEY	
	ATTN: JOSEAH INNAMORATI	
(15)	MT. STATES MUT. CAS. CO., P.O. BOX 249	LEGAL SERVICES (LITIGATION)
	ALBUQUERQUE, N.M. - ATTN: ROGER RUELON	
(16)	PACCAR, INC., P.O. BOX 1518, BELLEVUE, WASH.	" " "
	ATTN: TERRY BROWN	

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U.S. Office of Personnel Management

Reporting Individual's Name: JAMES A. PARKER

Form Approved
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Part I
Positions Held Outside U.S. Government

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NONE ☐

Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Example: Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/90	6/93
Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/70	11/93

Part II
Compensation in Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

Source (Name and Address)	Brief Description of Duties
Example: Doe Jones & Smith, Hometown, USA	Legal services
Mutual Indemnity Mutual of Doe Jones & Smith, Hometown, USA	Legal services in connection with indemnity coverage
(1) AAR AIRCRAFT, INC	LEGAL SERVICES (LITIGATION)
C/O MONDEL + MOUNT, 3 PARK AVE, N.Y.C., N.Y.	
ATTN: PAUL MORAN	
(2) FIRESTONE TIRE + RUBBER CO.	" " "
C/O NICHOLSON, HARLING + ALEXANDER, 300 N. WALKER	
OKLA. CITY, OKLA ATTN: JOHN NICHOLSON	

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COMMITTEE
JUL 20 PM 4:5

AMERICAN BAR ASSOCIATION

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and Member at Large
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101 St. Paul's Boulevard
Norfolk, VA 23510

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ELEVENTH CIRCUIT
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P.O. Box 78
Montgomery, AL 36104

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Washington, DC 20006

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312/988-5685

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Diane Livingston
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Chicago, IL 60611
312/988-5701

July 14, 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: JAMES A. PARKER
United States District Court
for the District of New Mexico

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of James A. Parker for appointment as Judge of the United States District Court for the District of New Mexico.

Our Committee is unanimously of the opinion that Mr. Parker is "Well Qualified" for this appointment.

Sincerely,

Robert B. Fiske, Jr.

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

CONFIRMATION HEARING ON: ROBERT E. COWEN, MICHAEL B. MUKASEY, AND GEORGE C. SMITH

TUESDAY, OCTOBER 20, 1987

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:40 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Howard Metzenbaum presiding.

Also present: Senator Thurmond.

Staff present: Steven J. Metalitz, chief nominations counsel; Linda Greene, counsel to Sen. Metzenbaum; Duke Short, minority chief investigator.

Senator METZENBAUM. The committee will come to order, and I want to apologize to everybody for being late. We postponed this hearing because I had an Intelligence Committee meeting that came up that was unexpected and so I had no choice.

We have Senator Bradley here with us to present his nominee, who is the Hon. Robert E. Cowen. We would be happy to hear from you.

STATEMENT OF HON. BILL BRADLEY, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator BRADLEY. Thank you very much, Mr. Chairman. Should I continue, Mr. Chairman?

Senator METZENBAUM. Please do.

Senator BRADLEY. Thank you very much. It gives me great pleasure to come before the Judiciary Committee a second time on behalf of Judge Robert Cowen. Just 2 years ago, Judge Cowen was confirmed by the Senate as a Federal district court judge from New Jersey. Today, he will appear before you as a candidate for the Third Circuit Court of Appeals.

Let me review for you Judge Cowen's outstanding credentials. Prior to his appointment to the district court, Judge Cowen served as U.S. Magistrate for the District of New Jersey, a post he held since 1978.

In both his present position and as U.S. magistrate, he has consistently been praised by members of the bar and his colleagues on the district court for his diligence, dedication and legal knowledge. He has done a remarkable job of forging settlements among disputants, and has done so in a way that has earned him the respect of all who have observed and know him.

Judge Cowen will bring to the Third Circuit Court of Appeals an invaluable breadth of experience. In addition to his trial court experience, he has served as a deputy State attorney general, an assistant county prosecutor, and an attorney in private practice.

I would remind the committee of Judge Cowen's special sensitivity to the importance of maintaining the highest ethical standards. He set up and headed the Office of Ethics and Professional Responsibility for the New Jersey Supreme Court. His 5-year tenure as head of this office brought a new standard of excellence for the judiciary and lawyers subject to the commission's jurisdiction.

Mr. Chairman, Judge Cowen has served his State and the Federal judiciary with distinction and I am confident that he will bring that same level of excellent judicial service to the Third Circuit Court of Appeals.

Mr. Chairman, Also accompanying Judge Cowen is my distinguished colleague, Senator Lautenberg, who will also testify.

Senator METZENBAUM. Mr. Cowen, you were in difficulty and had great problems, but now, since Senator Lautenberg arrived, everything is going to be all right.

STATEMENT OF HON. FRANK R. LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. I thank the Chairman, my distinguished colleague, and the ranking member, the distinguished Senator from South Carolina. I agree with what Senator Bradley said, except that I have a few other comments I would like to add, if I might, Mr. Chairman.

Senator METZENBAUM. We would be happy to hear from you.

Senator THURMOND. Senator Bradley is fixing to leave here. That is all right; go ahead. I was just going to compliment the nominee on having both of these able Senators come here in his behalf.

Judge COWEN. I know what an endorsement that is, Senator Thurmond. Thank you.

Senator LAUTENBERG. I am pleased once again to be here to introduce to the Judiciary Committee and recommend Judge Robert E. Cowen, who has been nominated to serve on the U.S. Court of Appeals for the Third Circuit.

It was just over 2 years ago, Mr. Chairman, that I came before this committee and urged its approval of then Magistrate Cowen's nomination to the district court, and while Judge Cowen's promotion has come quickly, it is not undeserved.

He is a mature, experienced lawyer. His long record of service and achievement merits this nomination. While Judge Cowen has served only 2 years on the district court, he had served 7 years as a magistrate, and before that he was Chief of Ethics and Judicial Administration of the State's court system.

He served as a deputy attorney general, an assistant county prosecutor, and a long time ago as an attorney in private practice. Judge Cowen is a dedicated public servant and an able jurist, and he has continued to build a reputation as a fair, temperate and thoughtful judge.

He enjoys the respect of the bar in New Jersey and of those who have come before him. The comments that have been offered since his nomination have been consistent in their praise.

Mr. Chairman, they do not say that Judge Cowen is liberal or conservative or hard or soft; they say he is fair. They say he runs an efficient courtroom, and with delays marring the administration of justice, those management skills are much needed.

They say he listens not to some ideological imperative, but to the need to do justice in the case before him, and it is that, the desire to do justice, that he will bring to the circuit court.

My only concern, Mr. Chairman, is that the circuit court's gain is the district's loss. The caseload in New Jersey is so backed up that cases are being farmed out to other districts. Once confirmed and sworn in, Judge Cowen would leave a third vacancy on the district court in New Jersey.

I applaud the committee for moving so promptly on this nomination now that the Judge Bork hearings are behind us, but I would urge you to move as quickly as possible to consider nominees for the district court positions.

I appreciate the opportunity to testify before you and to recommend for your favorable and prompt consideration Judge Robert E. Cowen.

Senator METZENBAUM. Judge Cowen, you certainly are accompanied by two very well respected members of the Senate and we are very happy to welcome you here today. We normally do hear from the Senators who are making the presentations.

I might say to you that this is the eleventh hearing that we have held this Congress to consider nominations to the Federal courts, and I will note for the record that each nominee before the committee today has completed an extensive questionnaire on his qualifications, experience, and financial situation, and publicly available portions of these questionnaire responses will be printed in the record of this hearing.

[See appendix.]

Senator METZENBAUM. We will also keep the record open for a limited time for follow-up questions of the nominees. The balance of my statement will be included in the record.

[Prepared statement follows:]

SENATE COMMITTEE ON THE JUDICIARY

HEARING ON JUDICIAL NOMINATIONS

OCTOBER 20, 1987, 2:00 P.M.

OPENING STATEMENT OF SENATOR HOWARD METZENBAUM

This afternoon, the Judiciary Committee holds its eleventh hearing in this Congress to consider nominations to the lower federal courts.

Today, we will take testimony on three nominations. For the fourth time this year, we have a nominee to the Third Circuit Court of Appeals: Judge Robert E. Cowen, of New Jersey. We will also consider the nomination of Michael B. Mukasey to be United States District Judge for the Southern District of New York, a position that has been vacant for nearly two-and-a-half years. Finally,

we will take testimony on the nomination of Judge George C. Smith to be United States District Judge for the Southern District of Ohio.

As we customarily do, we will hear first from Senators who wish to introduce nominees to the Committee. Before we turn to these introductions, let me note for the record that each nominee before the Committee today has completed an extensive questionnaire on his qualifications, experience, and financial situation. The publicly available portions of these questionnaire responses will be printed in the record of this hearing. We will also keep the record open for a limited time for follow-up questions to the nominees, and for additional questions that may be submitted by members of the Committee who

are unable to be present this afternoon. Finally, we will include in the record the full introductory statements of home-state Senators.

Senator METZENBAUM. Judge Cowen, I think that I ought to swear you at this time, and I will ask each of the nominees if they would be good enough to stand at this point.

Senator LAUTENBERG. May I be excused, Mr. Chairman?

Senator METZENBAUM. Yes. Thank you, Senator Lautenberg.

Will the testimony you give today be the truth, the whole truth, and nothing but the truth, so help you God?

Judge COWEN. I do.

Mr. MUKASEY. I do.

Judge SMITH. I do.

Senator METZENBAUM. Judge Cowen, you were in charge of enforcing the judicial and professional——

Senator THURMOND. There is the Senator from New York. Do you want to take him first so he can go?

Senator METZENBAUM. All right. Senator D'Amato, would you like to have us take you first and then we will come back to the individual nominees?

STATEMENT OF HON. ALFONSE J. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Well, Mr. Chairman, I will be appreciative inasmuch as I do have a housing conference at 3 o'clock.

Mr. Chairman, I am deeply appreciative of having the opportunity to appear before you and Senator Thurmond. I am doubly pleased, Mr. Chairman, to have the opportunity to present a person whom I have come to know.

It is unusual, Mr. Chairman, for us to personally be acquainted with the nominees for Federal judge, particularly in a region as large as ours in New York, but I do know our nominee, Michael Mukasey. I know him to be a person of incredible integrity, a man of great legal capacity, and a man of renowned legal scholarship.

Mr. Chairman, I am going to ask that the full text of my remarks be included in the record as if read in their entirety, if I might be permitted to do so to save the committee time, and just simply say that not only has Michael Mukasey been a dean's list graduate of Columbia College, a graduate of Yale Law School where he served as one of the editors on the law review, but an outstanding Federal prosecutor.

As Assistant U.S. Attorney, Mr. Mukasey engaged in some of the most complex criminal litigation on behalf of the government, including investigations and prosecutions of narcotics, bank robbery, interstate theft, security fraud, et cetera.

As a matter of fact, over that period of time he distinguished and concluded his service by rising to the chief of the Official Corruption Unit. Indeed, he now is a senior partner in one of our Nation's most respected partnerships, and he takes this position today as one which will be a great financial sacrifice and it is his way of paying back to his Nation the opportunities that he has had.

I say that I am proud to know our future Judge Mukasey because I am confident that this committee will find him qualified and report him out favorably. He certainly is one of our President's finest nominees to our Federal bench and, Mr. Chairman, I am

proud to be able to present Mr. Michael Mukasey for this committee's consideration.

Senator METZENBAUM. Thank you very much, Senator D'Amato.

[Prepared statement follows:]

SENATE JUDICIARY COMMITTEE
HEARING STATEMENT
FOR
MICHAEL MUKASEY
OCTOBER 20, 1987

MR. CHAIRMAN:

I AM PLEASED TO PRESENT TO THE COMMITTEE, MICHAEL BERNARD MUKASEY, AS A NOMINEE FOR FEDERAL JUDGE IN THE SOUTHERN DISTRICT OF NEW YORK. CURRENTLY A PARTNER IN THE FIRM OF PATTERSON, BELKNAP, WEBB & TYLER, WITH WHOM HE HAS PRACTICED FOR OVER A DECADE, MICHAEL SERVED FOR 4 YEARS AS AN ASSISTANT UNITED STATES DISTRICT ATTORNEY IN THE SOUTHERN DISTRICT OF NEW YORK AND CONCLUDED HIS TENURE THERE AS CHIEF OF THE OFFICIAL CORRUPTION UNIT.

A DEAN'S LIST GRADUATE OF COLUMBIA COLLEGE, HE CONTINUED HIS EDUCATION AT YALE LAW SCHOOL AND SERVED ON THE BOARD OF EDITORS ON THE LAW JOURNAL. AS AN ASSISTANT UNITED STATES ATTORNEY, MICHAEL WAS ENGAGED IN CASES OF CRIMINAL LITIGATION ON BEHALF OF THE GOVERNMENT, INCLUDING INVESTIGATION AND PROSECUTION OF NARCOTICS, BANK ROBBERY, INTERSTATE THEFT, SECURITIES FRAUD, FRAUD ON THE GOVERNMENT AND BRIBERY. AS A PRIVATE ATTORNEY, HIS PRACTICE CENTERED ON LITIGATION, INCLUDING BOTH CIVIL LITIGATION AND COUNSELING, AND CRIMINAL DEFENSE LITIGATION AND COUNSELING.

ASIDE FROM HIS ACADEMIC AND PROFESSIONAL QUALIFICATION, WHICH ARE CONSIDERABLE IN AND OF THEMSELVES, MICHAEL MUKASEY ENJOYS A PERSONAL REPUTATION FOR FAIRNESS AND TEMPERATE GOOD JUDGEMENT. HE HAS ALSO HAD A SPIRITED INVOLVEMENT IN THE LIFE OF HIS COMMUNITY, ESPECIALLY THE NATIONAL CONFERENCE ON SOVIET JEWRY AND THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH.

MR. CHAIRMAN, I COMMEND THIS NOMINEE TO YOUR ATTENTION. HE HAS RECEIVED THE ENDORSEMENT OF HIS PEERS, OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, AND I BELIEVE HE WILL MAKE A SPLENDID ADDITION TO THE SOUTHERN DISTRICT BENCH.

Senator METZENBAUM. Mr. Mukasey, we will come back to you in just a few minutes. Senator D'Amato, if you have to leave, we certainly understand that.

Senator D'AMATO. Thank you, Mr. Chairman.

Senator THURMOND. Thank you very much, Senator, for coming in his behalf.

Senator D'AMATO. Thank you.

Senator THURMOND. That will help him a lot.

Senator METZENBAUM. In order that each of the nominees may be presented, Mr. Smith, do you want to come up to the table?

I am pleased to introduce George Smith from Columbus, Ohio, currently a common pleas judge in Franklin County, and before that he served 10 years as county prosecutor there. I have heard from Judges Graham, Rubin and Spiegel in Ohio asking that his nomination be considered as soon as possible.

He has been endorsed by several groups. The United Auto Workers are in support of his nomination, as are the Fraternal Order of Police, whose president I see here; the Ohio Association of Professional Firefighters, whose president is also with us; the International Union of United Automobile, Aerospace and Agricultural Implement Workers of America, who I do not believe are represented here, but we have heard from them.

We are very pleased to have you with us today, Judge Smith.

Judge SMITH. Thank you, Senator.

Senator METZENBAUM. I do have some questions for each of the witnesses and I feel certain that my distinguished colleague and friend, Senator Thurmond, may have some as well. But before doing so, I wonder if, in inverse order, we might ask you, Judge Smith, would you like to introduce your family? We are delighted to have them with us.

Judge SMITH. Yes, thank you very much. Senator Thurmond and Senator Metzenbaum, this is my wife, Barbara; my daughter, Beth Ann; our referee and bailiff, John Annarino, an attorney in Ohio. And, of course, you know Mr. Stokes, National President of the Fraternal Order of Police, and Mr. Gil Udell, representing the International Association of Firefighters.

Senator METZENBAUM. We are happy to have all of you.

Judge SMITH. Thank you, Senator.

Senator METZENBAUM. Mr. Mukasey, would you like to introduce your family?

Mr. MUKASEY. I would, Mr. Chairman; my sister and brother-in-law, Mr. and Mrs. Norbert Eckstein, who live in suburban Maryland; their son and his wife, Daniel Eckstein and his wife Suzy; and my colleague from my law firm, Franci Schwartz.

My wife Susan is recuperating from minor surgery. Unfortunately, she could not be here today, and I regret that. Our children, Marc and Jessica, are at school and could not be here. Thank you.

Senator METZENBAUM. Thank you very much.

And, Mr. Cowen, would you like to introduce anybody who is accompanying you here today?

Judge COWEN. May I, Senator Metzenbaum? I have my wife, Toby Cowen, with me. My 18-year-old daughter is a freshman at Northwestern University in Illinois; she cannot be here. I have a 12-year-old daughter at home in New Jersey whose school has

scheduled activities for her, and her school work is more important to her than her daddy's judicial aspirations.

I have, Senator Metzenbaum, brought with me my two present law clerks, who have been so loyal and so hard-working that I wanted them to attend, since this is as much their accomplishment as mine. I introduce Steven Herzog and Henry Sauerborn. A former law clerk, Edward Hartnett, is also accompanying me. Thank you very much, Senator.

Senator METZENBAUM. Why don't you remain in the seat, Judge Cowen, because I have some questions?

Judge COWEN. Yes.

Senator METZENBAUM. But if it gives you any reassurance with respect to your 12-year-old daughter who did not think she wanted to come, I will tell you that the first time I ran for the U.S. Senate in 1970 and I turned to my 12-year-old daughter and I said do you want me to win tonight, she said, "Daddy, do I have to answer that?" She was probably more right than either of us realized at the time because she was concerned that she might wind up getting a Senator but not having a Dad, though in a judge's case I do not think it is quite the same problem, hopefully.

Now, I would like to ask you, Judge Cowen, just a couple of questions. In the field of professional ethics, it is my understanding that you have told the committee that your work in this field is the achievement of which you are most proud.

Tell me, what did you do in that field that makes you so proud? In what area of ethics activity were you involved?

TESTIMONY OF HON. ROBERT E. COWEN, PRINCETON, NJ, TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT

Judge COWEN. Senator, at the time I was appointed as attorney in charge of ethics and judicial administration for the State of New Jersey, I had formerly been working as a deputy attorney general for the State of New Jersey in prosecutions.

In the wake of the Watergate matter, the Chief Justice of the Supreme Court, Chief Justice Garvin, wanted to completely recast the ethics structure in the State of New Jersey. He knew me, since I was acquainted with the Chief Justice when he was a trial judge. I had tried some matters before him, and I was also recommended to him for the position.

At that time, New Jersey, like most States, I would say, had an ethics structure which was moribund, and which could have used substantial upgrading. The public was clamoring for more strict standards and better administration in the enforcement of those standards.

Shortly after I was appointed to the position by Chief Justice Garvin, he unfortunately passed away, and I was reappointed to that position again by Chief Justice Hughes. Chief Justice Garvin, I should point out, was a Republican and Chief Justice Hughes, of course, was a Democrat.

I had been charged with the responsibility by both of these gentlemen to do whatever was necessary in order to put this entire ethics structure in such condition that it would be second to none in the country.

In 5 years the professional discipline in the State of New Jersey was increased, over eight-fold.

I was very proud that after only a year or two, the ethics structure in the State of New Jersey commanded the respect of not only the people of the State of New Jersey, but the very lawyers and judges who were subject to its jurisdiction.

Senator METZENBAUM. When you mention that the activity increased eight-fold, does that mean you brought eight times as many suspension cases or disbarments or that you had activities with respect to non-attorneys practicing law? In what area did you increase your activity?

Judge COWEN. No. This would be in attorney discipline, disbarment, suspension, reprimand, and we call it discipline imposed. Previously, in New Jersey it would have been virtually impossible to be disciplined for anything less than misappropriation of a client's funds. It was very difficult to be disciplined for many of the other violations of the Code of Professional Responsibilities.

But with the help of the Supreme Court and an upgrading of the various county committees, we were able to increase the discipline and to make the discipline structure of the State of New Jersey effective and respected.

Senator METZENBAUM. I guess I am trying to find out in what area of discipline were you moving.

Judge COWEN. Conflicts of interest, for instance, was the most important.

Senator METZENBAUM. What is that?

Judge COWEN. Conflicts of interests.

Senator METZENBAUM. Okay.

Judge COWEN. The misappropriation of clients funds was also something which we bore down on very hard. We also had a success in many other areas.

Senator METZENBAUM. Solicitation?

Judge COWEN. Solicitation was not something we dealt with in depth because it was, quite frankly, not a priority matter.

Senator METZENBAUM. I have no further questions.

Senator Thurmond.

Senator THURMOND. Judge Cowen, we are glad to have you with us. I congratulate you on your appointment by President Reagan, and I believe we had you here a few years ago up for the district judgeship. So, evidently, you have made a good record, since you are being promoted. It is nice to be promoted, is it not?

Judge COWEN. It certainly is.

Senator THURMOND. How does a responsible judge go about the process of interpreting such seemingly open-ended constitutional provisions as the due process or equal protection clauses?

Judge COWEN. I am sorry. I didn't hear the first part of the question.

Senator THURMOND. How does a responsible judge go about the process of interpreting such seemingly open-ended constitutional provisions as the due process or equal protection clauses?

Judge COWEN. You mean on the trial level, as I am presently sitting as a district judge, or as a general proposition?

Senator THURMOND. Well, I am just speaking about as a judge on the bench. In other words, how would you go about interpreting the due process or equal protection clause?

Judge COWEN. These are interpreted based upon the facts of the case before the court. They would be interpreted basically in the light of past precedent as to what these concepts stand for.

These are—while not totally defined terms, they have been the subject of many Supreme Court opinions. I think that in determining a case which involves these two concepts, one would have to look at established precedent and the facts of the case before the court.

Senator THURMOND. Would you follow stare decisis or would you follow your own interpretation if you felt the cases previously decided were wrong?

Judge COWEN. I only have, of course, experience as a trial court judge, and as a trial court judge, every judge must listen to the voice of higher authority. Otherwise, the entire system breaks down.

On a broader plane, I think, yes, I am bound by stare decisis. I believe in stare decisis. However, I also believe that such terms as due process of law, equal protections of the law, must be interpreted in the light of contemporary knowledge, science, and understanding.

Senator THURMOND. Judge, how would you resolve a conflict between your own conscience or your own sense of justice and the clear meaning of a statutory or constitutional provision?

Judge COWEN. I think every judge, every person, has his own private feelings, his own personal feelings. What I think personally or privately about a case or about a litigant has absolutely nothing to do with the way I should decide a case.

As a matter of fact, that is what being a judge is all about. You forget where you came from, where you were raised. You are a judge. You wear a robe to cover your background and personal feelings so that you bring objectivity to your decisions.

That is not to say you don't bring the experience of your background with you, but you decide cases as a judge with total objectivity, regardless of your personal feelings toward an issue, a person, or the matter which is before you.

Senator THURMOND. Do you believe that the Congress should make the law—the Constitution provides that—and that judges interpret the law? Some judges have taken it on themselves to write the law.

Judge COWEN. I absolutely think the Congress should make the law. Congress is the definitive spokesman for what in our society is the popular will. Congress is the ultimate spokesperson for what should be the law governing the land. It is not for judges to state what the law should be. They are there to interpret the law under the Constitution. Congress is the single exponent of the public policy of the American people.

Senator THURMOND. Some judges have taken over school districts, they have taken over prisons, they have taken over other State institutions, and even attempted—I heard last week where one was attempting to levy a tax and to give further directions

about the operation of a purely State institution. I just wondered how you felt about that.

Judge COWEN. I feel, Senator Thurmond, that judges are ill-equipped to be executives. It is very difficult for a judge to run a hospital, a prison, or to be, through a surrogate such as a standing master, an administrator.

I do recognize, however, that there may be some instances where by reason of fundamental constitutional considerations judges may have to take some executive steps, which they should only do with the greatest reluctance and tremendous caution.

As a matter of course, however, a judge's place is not to be running an institution; it is to be deciding a case before him.

Senator THURMOND. Thank you, Judge. That is all the questions I have.

Senator METZENBAUM. Thank you, Judge Cowen. Let me ask you, do you belong to any clubs that have restrictive membership policies?

Judge COWEN. Absolutely not, Senator Metzenbaum; absolutely not.

Senator METZENBAUM. And you have not in recent years?

Judge COWEN. I have never.

Senator METZENBAUM. Thank you very much, Judge Cowen. I will submit a few questions in writing. There is no necessity for you to remain further.

Judge COWEN. Thank you.

[The following was subsequently supplied for the record:]

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
ROBERT E. COWEN
JUDGE

402 E. STATE STREET
ROOM 542
TRENTON, NJ 08608
(609) 989-2012

October 21, 1987

Mr. Steve Metalitz
Special Counsel
Committee on the Judiciary
Dirksen Senate Office Building
Room 212
Washington, DC 20510

Dear Mr. Metalitz:

Enclosed herewith please find my responses to the two additional questions posed by Senator Metzenbaum.

Very truly yours,

ROBERT E. COWEN
UNITED STATES DISTRICT JUDGE

enc.

ADDITIONAL QUESTIONS BY SENATOR METZENBAUM
ADDRESSED TO JUDGE COWEN

1. You have presided over many trials both civil and criminal in your seven years as a United States Magistrate and your two years as a United States District Judge. Some people think that trial court experience is not a particularly useful background for an appellate judge.

What do you think?

Experience as a trial court judge is very useful to a judge on an appellate court. The cold record on review cannot fully reflect the pressures and problems confronting trial court judges who must instantly focus upon a problem and, without research and contemplation, make immediate responses. Appellate judges who do not have trial court experience may not appreciate other problems which should be considered in determining whether a trial court judge has acted properly. In addition, the dynamics of a trial are difficult to portray in an appellate appendix, and rulings on questions of evidence, procedure and the timely order of proof require a trial court judge, or any appellate court which reviews that trial court judge, to be keenly aware of the diverse components which go into making a fair trial. Many of these components are invisible and intangible, but all of us who have been in litigation know they exist. While I do not hold that one cannot be an appellate court judge without trial court experience, I have no hesitation in saying that trial litigation is a substantial asset in the background of any appellate court judge.

How will your experience in presiding at dozens of trials be valuable to you in your new role as a judge of the United States Court of Appeals?

Having presided at innumerable trials, I believe I have a firm understanding of the dynamics of the trial and the feel of the courtroom. With such a perception it is a great deal easier to determine whether the litigants have had a fair and impartial trial. It is also appropriate for me to relate that a United States District Judge has some appellate jurisdiction, such as hearing appeals from bankruptcy courts, social security appeals and decisions of United States Magistrates. The tools one would utilize in reviewing the above appeals, are substantially the same as are used by judges of the Court of Appeals.

2. The Court of Appeals will very soon have a new responsibility. Sentencing of convicted criminals has traditionally been left to the discretion of trial court judges. But the Sentencing Reform Act, as implemented by the sentencing guidelines that will go into effect soon, gives the Court of

Appeals the duty of reviewing sentences imposed by District Courts. This may prove to be a significant addition to the docket of the Court of Appeals.

Are you prepared to assume this new responsibility?

In order to prepare myself for the new duties required by the Sentencing Reform Act of 1984, I have kept abreast of the development of that law and its implementation starting November 1, 1987. I attended a Federal Judicial Center Seminar in 1985 shortly after the Act was passed, and thereafter read the sentencing guidelines. The revised draft of the sentencing guidelines which was published in January, 1987, have also been perused by myself, and I am aware of the new responsibilities concerning sentencing and the aspects which a judge must take into consideration in passing sentence. In December of 1986, all of the District Judges in the District of New Jersey had a meeting concerning the requirements of the new Act and on November 1, 1987, we will again meet for an updated discussion of the requirements and procedures to be employed in sentencing. And finally, I have read an excellent memorandum entitled "Handling Sentence Appeals Under the Sentencing Reform Act of 1984", which is dated September 28, 1987, and was prepared under the auspices of the Federal Judicial Center. This latest article, in particular, has given me an excellent understanding of how the Act will be implemented at the trial level and reviewed on appeal.

How has your background equipped you to provide fair and expeditious review of sentencing decisions made by trial courts throughout the Third Circuit Court of Appeals?

The fact that I have been an Assistant Prosecutor, a Deputy Attorney General, as well as a defendant's attorney many years ago, has afforded me the opportunity of understanding the sentencing function from all sides of the triangle, Government, defendant and Court.

ROBERT E. COWEN
UNITED STATES DISTRICT JUDGE

Senator METZENBAUM. Mr. Mukasey, do you want to come forward, please?

Mr. Mukasey, you have been nominated to fill a vacancy that occurred when Judge Sofaer left the bench to become legal adviser to the State Department in June of 1985. The Senate did not receive your nomination until July 27th of 1987, more than 2 years later.

This hearing is taking place less than 3 months after the Senate received the nomination. The committee is interested in why it took the President more than 2 years to make this nomination. Do you have any idea as to the reason for the delay?

TESTIMONY OF MICHAEL B. MUKASEY, NEW YORK, NY, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Mr. MUKASEY. I believe I do, Senator.

Senator THURMOND. Mr. Chairman, I am just wondering, does he know anything about why it took the President so long to appoint a judge.

Senator METZENBAUM. He said he does.

Mr. MUKASEY. I don't think it took the President so long is my point. I believe another name was proposed to fill that vacancy and that that person's nomination is in process.

For some reason, his paperwork got delayed at some point along the line. I don't know why. In fact, I believe that my nomination was intended to fill a later vacancy, and because my paperwork for some reason went faster than his, I am here sooner than he is. But it was a delay in somebody else's paperwork, not in the President's action, I believe.

Senator THURMOND. We have got a lot of judges here before the committee. I think a more pertinent question is why doesn't this committee hold more hearings and get more done.

Senator METZENBAUM. Well, we have moved very rapidly with respect to this man, and the Senate Judiciary Committee has held hearings on 63 percent of the nominations received. During the pendency of the Bork nomination alone, the committee has held, including today's hearing, four nomination hearings on a total of 14 nominees.

During the comparable period in 1986 when the Rehnquist and Scalia hearings were pending before the committee, June 20th to August 14th, the committee, under your chairmanship, held one hearing on three judicial nominees.

The Senate Judiciary Committee has calculated that the average time that has elapsed from the date the nomination was received by the committee to the date of the hearing before the committee is 2.8 months. However, the average time from the date of the vacancy to the date that the President made the nomination has been 10.7 months. So I am glad you asked the question.

Senator THURMOND. Mr. Chairman, I would just like for the record to show we have about 30 nominations now before the committee, and some of them have been here since February.

Senator METZENBAUM. Well, please understand that there has been one matter up that did take a bit of time. I think you recol-

lect that we held rather extensive hearings on the Bork matter, and I think this committee is moving forward with dispatch.

I am certain that there is no intent to delay the confirmation process, and I do not want to delay Mr. Mukasey either, so if I may be permitted to go forward with my questioning of him. But if you wish to continue the dialog——

Senator THURMOND. Well, I wrote Senator Biden a letter last week and he told me today he has not read it yet. But as soon as he reads it, I would like for him to show it to you and I am anxious to get an answer to it.

Senator METZENBAUM. I will be very happy to read anything that my distinguished colleague has written, and whether he shows it to me or not, if you send me a copy, I will be glad to read that. I am very happy to do so.

Senator THURMOND. Maybe you can help us to get more hearings.

Senator METZENBAUM. Well, I think that is a commendable——

Senator THURMOND. You are a man of action, so I am counting on you.

Senator METZENBAUM. Have no fear, Metzie is here, and we will take care of it. [Laughter.]

Now, then, Mr. Mukasey, let us get back to you, sir. I know that you used to work as an assistant to Rudolph Giuliani, U.S. attorney in Manhattan. Are you and he close personally as friends?

Mr. MUKASEY. Yes, sir, we are.

Senator METZENBAUM. Do you see any possibility of that posing any conflict of interest in the matter of your handling cases the U.S. attorney is presenting? How would you go about handling that?

Mr. MUKASEY. The only potential problem I would foresee is a case—and it is the rare case, very much the rare case—that he would handle personally himself. In the event that there were such a case, I would feel obligated to excuse myself. We are close personal friends and I don't think it would be proper for me to hear such a case.

But simply for cases that are brought by his office nominally in his name, I would have no trouble at all sitting on those. I don't think they pose a potential or actual conflict.

Senator METZENBAUM. On December 2, 1985, the New York Times published an article you wrote entitled "In Defense of a Vigorous U.S. Attorney." That article defended certain actions taken by the U.S. Attorney for the Southern District of New York in organized crime cases.

In that article you wrote the following:

> Those who see a threat to the presumption of innocence seem to misunderstand what that presumption is and when it applies. The presumption of innocence is a rule of evidence, a basic one, to be sure, but a rule of evidence nonetheless, which applies during a trial, not beforehand.

Now, are you saying that when you are walking down the street and somebody might want to accuse you of a crime that there is not a presumption of innocence that exists prior to the trial?

Mr. MUKASEY. If you are simply walking down the street and somebody levels an accusation, it seems to me that the circum-

stances of the incident speak to whether a crime has been committed or not.

The point I was trying to make in the article is that the presumption of innocence is a very serious thing and is something that has to be applied diligently by juries, and as such it should be well understood.

It applies when a jury is picked, after a jury is picked, throughout the trial. If a presumption of innocence applied before the trial, one could never be bound over for a grand jury. One could never be held subject to bail. One could never really even be arrested if a presumption of innocence attached prior to a trial.

Senator METZENBAUM. Wait a minute. I do not quite follow you. Do you mean to say that you are pretty much following the line of thought of the Attorney General——

Senator THURMOND. Mr. Chairman?

Senator METZENBAUM. Yes?

Senator THURMOND. Would you let me interrupt a minute?

Senator METZENBAUM. Yes.

Senator THURMOND. I have a meeting at 3:15 I have got to go to. I have looked over the records of both these gentlemen remaining; in fact, all three of them, Mr. Cowen, too. I have no objection to any of them. I think they are well equipped and well prepared to perform the duties, and therefore I would favor all three of them.

Senator METZENBAUM. Thank you.

Senator THURMOND. Now, I might state for the record that in connection with the record of Judge Smith, in reviewing the file I noticed that he is a member of the Masons. I have been a Mason since 1925 and feel honored to be a part of such a fine and outstanding organization.

Earlier this year, another nominee's membership in the Masons became an issue for some members of this committee. That particular nomination was held up in committee for close to 4 months, which is inexcusable.

I would like to ask the Chairman if we are going to see Judge Smith's membership in the Masons become an issue before this committee.

Senator METZENBAUM. We are going to insist that he join the B'nai B'rith and the Knights of Columbus as well. [Laughter.]

I think that is what all nominees ought to have to do, but other than that I do not know that we have anything in mind. I do not have any questions on the subject. I have not referred to it and I——

Senator THURMOND. A large number of the Senators on the committee, of course, are Masons. George Washington was a Mason. I could go on and name person after person. Eighteen Senators are Masons; 5 on this committee are Masons.

So knowing you as I do, I did not think you would raise that point, and I am sure you will not.

Senator METZENBAUM. Without levity, I may have a couple questions along that line, but I do not see it as a major problem.

Senator THURMOND. Well, I am glad to hear you say that and I am glad you are taking the right view of that, and I thought you would.

Senator METZENBAUM. I always take the view that my distinguished colleague suggests I take. I am known for that.

Senator THURMOND. You will excuse me now, and I favor all three of these people. I think they are well qualified.

Senator METZENBAUM. I am going to move very rapidly because we have a 15-minute roll call on and I do want to hear from the Ohio nominee.

I must tell you that I have some difficulty with this question of presumption of innocence, and with your view about it not being applicable except as a rule of evidence. It sounds somewhat like Mr. Meese's comment, that a defendant would not have been charged with a crime if he probably were not guilty, or something to that effect.

I do not think I have time to get into it in its entirety, but I may have some written questions for you before we submit it to the full committee.

Mr. MUKASEY. Well, all I am saying really is that I would follow the Supreme Court's reasoning in *United States* v. *Salerno*, in which it upheld the Organized Crime Control Act provisions relating to the legality and constitutionality of pre-trial detention on the basis, for example, of a prediction of future dangerousness.

I certainly do not mean to trivialize the presumption. It is, I believe, constitutionally mandated, and it is something about which juries have to be instructed and which judges have to be very careful to safeguard.

Senator METZENBAUM. In your New York Times op ed piece, you suggest that it is proper for prosecutors to be able to subpoena criminal defense attorneys to inquire whether their fees derived from the proceeds of crime.

If an attorney must literally testify whether fees come from the proceeds of crime, is not he or she being put in the position of testifying whether the client is guilty or innocent?

Mr. MUKASEY. I think the point that I was making in that article was simply that any attempt by the U.S. attorney to confiscate the proceeds of crime, even when they were used to make a large down payment for a lawyer, would be attempts that were made in court with the protection of a judge on the bench; that they were not simply a unilateral step being taken by the U.S. attorney.

This was in response to a criticism that had been leveled unfairly, I thought, against Mr. Giuliani for acting in a fashion that was authorized by law and going into court in an attempt to achieve a certain end. The point that was to be made was that it was being done with the protection and under the supervision of a court.

Senator METZENBAUM. You are a corporate lawyer. General Dynamics, Boeing, McDonnell-Douglas comes in and they are charged with violating the law. Does the lawyer have to refuse to represent them in that case?

Mr. MUKASEY. Not at all. It seems to me that the statute that we are talking about, I believe, authorizes seizure of the proceeds of certain kinds of crimes under certain specified circumstances, and there has to be a very strong showing by the government before that can be done.

If it were done—I mean if, hypothetically, it were to be done in an appropriate case, whether it involves a corporation or an individual, it seems to me, you follow the statute where it takes you.

Senator METZENBAUM. Would there not be a chilling effect on the attorney-client relationship if the client knew that his attorney might be called to testify about the things they have discussed?

Mr. MUKASEY. I cannot as I sit here conceive of any circumstance in which an attorney could be compelled to testify to what his client told him, and I certainly would not, I hope, come even close to permitting any such thing in a courtroom, assuming I ever preside in a courtroom.

Senator METZENBAUM. You represented Roy Cohn in his disbarment proceeding. Did you have any professional relationship with Mr. Cohn at the time he committed the unethical conduct which led to his disbarment?

Mr. MUKASEY. No, sir.

Senator METZENBAUM. I have some other questions that I am going to submit to you in writing.

[The aforementioned material follows:]

ADDITIONAL QUESTIONS OF SENATOR METZENBAUM FOR MR. MUKASEY

1. YOU ARE THE ONLY NOMINEE BEFORE THE COMMITTEE THIS AFTERNOON WHO HAS NO PRIOR EXPERIENCE AS A JUDGE. YOU HAVE BEEN NOMINATED TO ONE OF THE BUSIEST DISTRICT COURTS IN THE NATION, AND ONE THAT HAS MORE THAN ITS SHARE OF COMPLEX CASES.

WHAT IS THE BIGGEST CHALLENGE YOU FACE IN MOVING FROM THE ROLE OF ADVOCATE TO THE ROLE OF A JUDGE, PARTICULARLY IN A HIGH-VOLUME, HIGH-PRESSURE COURT LIKE THE SOUTHERN DISTRICT OF NEW YORK?

ANSWER: I BELIEVE THE BIGGEST CHALLENGE I FACE ACTUALLY DEFINES THE JOB: NOT ONLY TO GIVE TO EACH LITIGANT AS FULL AND FAIR A HEARING AS THE CASE REQUIRES, BUT TO BE PERCEIVED BY LITIGANTS AND THE PUBLIC AS DOING SO, AND TO DO SO IN A WAY THAT RESULTS IN PROMPT DISPOSITION OF CASES IN A DOCKET OF 400 CASES OR MORE. THAT IS A DAUNTING CHALLENGE, BUT I BELIEVE THAT SOME OF THE SAME SKILLS USEFUL TO AN ADVOCATE -- ABILITY TO ANALYZE FACTS AND LAW EVEN IN CASES RAISING UNFAMILIAR ISSUES, WILLINGNESS TO WORK HARD -- ARE USEFUL TO A JUDGE. THOSE ARE SKILLS I CAN TRANSFER, TO THE EXTENT I POSSESS THEM, FROM THE ROLE OF ADVOCATE TO THE ROLE OF JUDGE.

ONE QUALITY, AS OPPOSED TO SKILL, THAT I HAD LESS NEED FOR AS AN ADVOCATE AND WILL NEED IN GREAT MEASURE AS A JUDGE, IS PATIENCE. I HOPE MY AWARENESS OF THAT NEED MEANS I WILL HAVE THAT QUALITY. CERTAINLY, THE KIND OF OCCASIONALLY COMBATIVE STANCE OF AN ADVOCATE WHO FACES ANOTHER ADVOCATE ON EQUAL TERMS

HAS NO PLACE ON THE BENCH, WHEN ONE DEALS WITH COUNSEL, PARTIES AND WITNESSES WHO ARE NOT FREE TO RESPOND IN KIND.

2. YOU HAVE NEARLY TWENTY YEARS' EXPERIENCE AS A LITIGATOR. YOU HAVE APPEARED BEFORE SOME EXCELLENT TRIAL JUDGES, AND ALSO BEFORE SOME WHO ARE NOT SO GOOD. WHAT QUALITIES ARE MOST IMPORTANT FOR AN EFFECTIVE TRIAL JUDGE?

ANSWER: I BELIEVE THAT PATIENCE, INTELLIGENCE AND THE WILLINGNESS TO WORK HARD CHARACTERIZE THE BEST TRIAL JUDGES BEFORE WHOM I HAVE APPEARED. IN A WAY, THEY BALANCE AND COMPLEMENT ONE ANOTHER. INFINITE PATIENCE UNGUIDED BY AN INTELLIGENT FOCUS ON ISSUES DOES NO ONE ANY FAVORS. INTELLIGENCE THAT IS NOT INFORMED BY A DILIGENT MASTERY OF THE FACTS, WHICH CAN COME ONLY FROM HARD WORK, IS NEXT TO USELESS. AND FINALLY, EFFORT ALONE CANNOT PRODUCE RESULTS WHEN PATIENCE AND INTELLIGENCE ARE NOT BROUGHT TO BEAR.

I THINK I DO NO ONE A DISSERVICE IF I POINT OUT THAT ONE JUDGE IN THE SOUTHERN DISTRICT OF NEW YORK EXEMPLIFIES THESE QUALITIES FOR ME -- JUDGE EDWARD WEINFELD. HE IS A MAN OF GENERALLY ACKNOWLEDGED BRILLIANCE AND MATCHLESS JUDICIAL TEMPERAMENT, WHOSE DAY BEGINS WITH ARRIVAL AT THE COURT BY ABOUT 6:30 A.M., AND DEPARTURE FREQUENTLY AT 7:00 P.M. OR LATER -- SIX DAYS A WEEK. JUDGE WEINFELD IS 86 YEARS OLD, AND HAS MAINTAINED THAT PACE SINCE HE WAS APPOINTED IN 1951. THAT IS MY IDEA OF EXCELLENCE IN A TRIAL JUDGE.

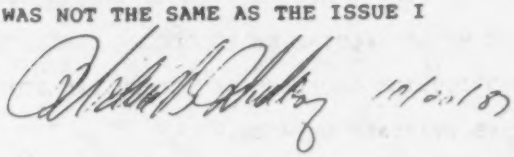
RESPONSE OF MICHAEL MUKASEY TO QUESTION ASKED BY SENATOR METZENBAUM:

I WISH TO EXPAND AND EXPLAIN FOR THE RECORD THE VIEWS I EXPRESSED IN A DECEMBER 2, 1985 NEW YORK TIMES ARTICLE CITED BY THE CHAIRMAN, IN PARTICULAR MY REFERENCE TO THE PRESUMPTION OF INNOCENCE AS A RULE OF EVIDENCE THAT APPLIES AT TRIAL, NOT BEFOREHAND. WHAT I WAS RESPONDING TO IN THAT ARTICLE WAS THE CLAIM THAT SUCH PRACTICES AS INCLUDING ALIASES IN INDICTMENTS, ANNOUNCING INDICTMENTS AT PRESS CONFERENCES THAT LIMIT DISCUSSION TO MATTERS IN THE PUBLIC RECORD, AND SIMILAR PRACTICES, ENDANGER THE PRESUMPTION OF INNOCENCE. MY POINT WAS SIMPLY THAT THAT PRESUMPTION, WHICH REQUIRES PROOF BEYOND A REASONABLE DOUBT BEFORE A DEFENDANT MAY BE CONVICTED AND IS, I BELIEVE, MANDATED BY THE DUE PROCESS CLAUSE, IS NOT AT ISSUE BEFORE THERE IS OCCASION TO DEAL WITH THAT BURDEN OF PROOF AT TRIAL. THAT IS NOT TO SAY THAT A PERSON UNDER INVESTIGATION OR WHO HAS BEEN INDICTED HAS NO RIGHTS THAT PROCEED FROM THE PRINCIPLE THAT EVERYONE IS INNOCENT UNTIL PROVEN GUILTY. TO THE CONTRARY, A CLEAR SHOWING OF PROBABLE CAUSE IS NECESSARY, FOR EXAMPLE, BEFORE A SEARCH OR AN ARREST CAN BE MADE, OR A TELEPHONE TAPPED. MOREOVER THE BAIL REFORM ACT AND SUBSEQUENT BAIL STATUTES ALL PROCEED FROM THE ASSUMPTION THAT THE LEAST RESTRICTIVE ALTERNATIVE IS ALWAYS TO BE PREFERRED WHEN CONSIDERATION IS GIVEN TO HOW A DEFENDANT'S PRESENCE AT TRIAL CAN BE ASSURED AND THE COMMUNITY AT LARGE PROTECTED. IN ANY OF THOSE DETERMINATIONS AN INDICTMENT OR ARREST, BY ITSELF, HAS NO WEIGHT WHATEVER, JUST AS IT HAS NO

WEIGHT WHATEVER AT A TRIAL WHERE THE ACCUSED HAS THE ADDITIONAL PROTECTION AFFORDED BY THE PRESUMPTION OF INNOCENCE.

HERE I THINK IT APPROPRIATE TO ADD THAT THESE VIEWS ARE CONSISTENT NOT ONLY WITH THE MAJORITY OPINION IN UNITED STATES v. SALERNO, _U.S._,107 S.CT. 2095 (1987), BUT EVEN WITH JUSTICE MARSHALL'S DISSENT, WHICH READILY AGREED WITH THE PROPOSITION THAT AN INDICTMENT "ESTABLISHES THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT AN OFFENSE WAS COMMITTED, AND THAT THE DEFENDANT COMMITTED IT." ID. AT 2110. THE CRUCIAL POINT HERE IS ONE CONGRESS ITSELF MADE IN THE STATUTE AT ISSUE IN SALERNO WHEN IT WROTE THAT THAT STATUTE, WHICH DEALS WITH BAIL AND NOT WITH TRIAL PROCEDURE, SHOULD NOT BE READ AS "MODIFYING OR LIMITING THE PRESUMPTION OF INNOCENCE." 18 U.S.C.§3142(j) (1987 ED. SUPP.III).

AS TO THE COMMENTS OF THE ATTORNEY GENERAL ABOUT MIRANDA, QUOTED BY THE CHAIRMAN, TO THE EFFECT THAT MOST SUSPECTS ARE GUILTY, I SHOULD POINT OUT THAT THE MIRANDA DECISION, WHICH REMAINS THE LAW AND WHICH I WOULD BE BOUND ON MY OATH TO ENFORCE FULLY, IS NOT BASED ON THE PRESUMPTION OF INNOCENCE. INDEED, I BELIEVE THAT DECISION SPRINGS FROM THE ASSUMPTION THAT INNOCENT OR GUILTY, A PERSON HAS A RIGHT TO COUNSEL, AND TO SILENCE -- AND A RIGHT TO BE ADVISED OF THOSE RIGHTS BEFORE DECIDING WHETHER TO TALK TO THE AUTHORITIES. THUS, THE ISSUE THAT WAS ADDRESSED BY THE ATTORNEY GENERAL, IN COMMENTS I BELIEVE HE MODIFIED SUBSTANTIALLY THEREAFTER, WAS NOT THE SAME AS THE ISSUE I ADDRESSED IN MY ARTICLE.



OF SENATOR THURMOND

QUESTIONS FOR MICHAEL B. MUKASEY, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

1. MR. MUKASEY, DO YOU FEEL THAT A DISTRICT COURT JUDGE SHOULD ASSUME DIRECT CONTROL OVER COMPLEX ISSUES AND CASES IN ORDER TO AVOID DELAYS AND TO EFFECTIVELY MANAGE SUCH CASES?

ANSWER: I BELIEVE THAT EFFECTIVE CASE MANAGEMENT IS CRUCIAL TO EFFECTIVE SERVICE IN A DISTRICT LIKE THE ONE TO WHICH I HAVE BEEN NOMINATED, WHEN JUDGES HAVE DOCKETS OF 400 CASES OR MORE. IF JUSTICE IS TO BE DONE, DECISIONS MUST BE RENDERED IN TIMELY FASHION, AND CASES NOT PERMITTED TO DRAG ON FOR YEARS TO THE DETRIMENT OF THE LITIGANTS AND THE PUBLIC AT LARGE.

2. MR. MUKASEY, ARE THERE EVER ANY CIRCUMSTANCES WHERE YOU WOULD CONSIDER IT APPROPRIATE TO DECIDE A CASE ON SOME BASIS OTHER THAN ONE WHERE THE INTENT OF THE FRAMERS OF LEGISLATION OR CONSTITUTIONAL PROVISIONS CAN BE DETECTED. EITHER THROUGH THE TEXT OF A PROVISION OR ITS SURROUNDING LEGISLATIVE HISTORY?

ANSWER: THERE ARE NO SUCH CIRCUMSTANCES. THE OATH I HOPE TO TAKE WOULD REQUIRE ME TO DECIDE CASES "AGREEABLY TO THE CONSTITUTION AND LAWS OF THE UNITED STATES," NOT ACCORDING TO ANY OTHER STANDARD OR VIEW.

Michael B. Mukasey 10/2/87

[From the New York Times, Dec. 2, 1985]

In Defense of a Vigorous U.S. Attorney

(By Michael B. Mukasey)

Pascal taught that the first rule of morality, and thus of public discourse about it, is to think clearly. In that spirit, here are a few thoughts about organized crime. The Mafia exists. It is not the creation of novelists or journalists. It has exacted a toll in misery that would shame the Inquisition and a toll in treasure that would embarrass the Pentagon. It consists not of dashing Robin Hoods or buffoons but of willful, disciplined men who have too long burdened all of us.

Against this private army, law enforcement recently has made unprecedented inroads. The leaders of the five major groups or families in New York are under indictment, including not only the top five but also 130 associates and lieutenants. Convictions of major narcotics violators have been secured. For the first time, the Government has charged the Mafia as an organization, using the Racketeer Influenced and Corrupt Organizations statute properly. The good guys haven't won but they have taken the offensive. This should cause satisfaction.

Yet, United States Attorney Rudolph W. Giuliani, who heads the office that has done most of this, has been unfairly charged with violating ethical rules by supposedly disclosing improper information at news conferences, with threatening the presumption of innocence by indicting defendants under their noms de guerre (for example, Frank "the Beast" Falanga), with jailing them without bail, with conducting mass trials, with wrongfully subpoenaing defense lawyers and picking jurors anonymously—a one-man war on the Constitution if you take these charges at face value. But if you do, you shouldn't.

As to press conferences announcing and explaining indictments, Mr. Giuliani, in referring strictly to matters already in the public record, has done nothing improper and nothing his predecessors did not do. After all, the public is entitled to know what his office is doing about the Mafia.

As to aliases, indictments often include them, and for good reason: to make testimony and tape recordings comprehensible to juries. If a defendant's confederates refer to him as "the Beast," because that is how he is known and wishes outside the courtroom to be known, why should a prosecutor refrain from so indicting him?

Mr. Giuliani is being criticized for the results of a process in which courts participate. A defendant indicted with others may move to have his case tried separately, but the law proceeds from the sensible idea that those charged with acting criminally together may be tried together, with the Government compelled to establish the criminal connection among them.

What about intimidating subpoenas to lawyers? The law authorizes seizure of the proceeds of crimes. It is proper to inquire into whether a defense lawyer's fees derive from such proceeds. Defense lawyers may challenge subpoenas in court, and do.

Pretrial incarceration and anonymous selection of jurors are legal remedies a prosecutor may invoke, but he does his invoking before a court, which must approve such procedures based on evidence that the defendants are dangerous.

Those who see a threat to the presumption of innocence seem to misunderstand what that presumption is and when it applies. The presumption of innocence is a rule of evidence—a basic one, to be sure, but a rule of evidence nonetheless, which applies during a trial, not beforehand.

Nor is there much of a practical threat. Juries were uneventfully chosen in the three cases under way, with little or no evidence that pretrial publicity lingered in potential jurors' minds. Similarly, in two non-Mafia cases thus far tried by anonymous juries in New York, some defendants have been acquitted, suggesting that jurors can make distinctions that elude pundits.

In their zeal to attack a prosecutor who is far too effective to suit their tastes, Mr. Giuliani's critics overlook a simple truth about jurors and how they function. Jurors generally have little familiarity with the legal system and thus little of the contempt that familiarity may breed. They take an oath to decide each case on facts proved in a court according to a judge's instructions on the law—an oath they take seriously. We are better served by Mr. Giuliani and diligent jurors than by critics who baselessly attack him and simply disregard them.

Senator Metzenbaum. I do have some concern about some of these matters that have been raised, but I think I owe it to Mr. Smith to inquire of him further.

Mr. Mukasey. I hope I can answer the Chairman's questions.

Senator METZENBAUM. Thank you very much.

Mr. MUKASEY. Thank you.

Senator METZENBAUM. Mr. Smith, the committee has received many positive comments on your nomination, but some concerns have been raised about your participation as a State court judge in a lawsuit brought last year by the police and firefighters union against the Columbus Civil Service Commission.

The unions wanted to enjoin the commission from conducting promotional tests for police and firefighters. The case arose against the background of past discrimination against minorities in the police and firefighters departments.

It has been alleged, and I know an allegation is not necessarily true, that you summarily decided the case without giving the civil service commissioners who were named as defendants any opportunity to respond to the lawsuit or even to obtain counsel.

You enjoined the administration of promotional tests. Soon thereafter, the case was removed from the State court to Federal district court. As you well know, I am very friendly with both the police and firemen who are here supporting you, but I think it is important that I put this question out on the table to ask you.

TESTIMONY OF HON. GEORGE C. SMITH, COLUMBUS, OH, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO

Judge SMITH. Thank you, Senator. I would be happy to respond. Basically, the facts that have been presented to the Senator and to the committee are not accurate. It was merely a temporary order over a civil service examination, promotional examination, and the only order that I issued was that the exam should be stayed until the court would have time to study the case on the merits.

All parties were represented by counsel, the city attorney's office who represents all parties in the city of Columbus, as well as the firefighters and the Fraternal Order of Police. All parties were represented; all had an opportunity.

The court merely issued a temporary order, restraining order, to maintain the status quo. No decision was ever made on the merits. The case went to the Federal court the next day. The city then offered a compromise, Senator, and the compromise was basically that they would give the exam and grade it later, a compromise which I would have jumped at as a State trial court judge had it been offered, and it was not.

Senator METZENBAUM. And did you have any special relationship with the FOP or the firefighters and the attorneys for those parties?

Judge SMITH. I have no special relationship. They are friends, as are the city attorney and the persons in that office, an office which I was once associated with, including the—well, as I said, I have friends on all sides.

Senator METZENBAUM. Are you a member of other clubs besides the Masons—the Masons is not a club; it is a fraternal organization. Are you a member of other clubs that have discriminatory membership policies?

Judge SMITH. There are some organizations that I don't think are up to snuff, Senator, that I intend to withdraw from. There is one

exceptional circumstance. It is a family club. The Senator, I believe, is familiar with it, the Columbus Athletic Club.

My special circumstance there is they have set up a handicapped program for swimming which I participate in, and have for about 20 years, including special facilities, and I would like to maintain my membership there.

The only deficit that they have is that the women memberships are not quite on the same basis as the men's. In other words, they don't have full voting powers. They do have—you can be a corporate member. Widows are members, clergy are members as women.

Senator METZENBAUM. Do you belong to the Columbus Club?

Judge SMITH. Pardon me?

Senator METZENBAUM. Do you belong to the Columbus Club?

Judge SMITH. No, sir.

Senator METZENBAUM. And it is the Columbus Athletic Club that has a limited membership policy with respect to women?

Judge SMITH. They don't have full voting rights, but I would like to maintain my membership for the athletic facility.

Senator METZENBAUM. I am going to terminate this hearing, but I wish you would provide the committee with a list of those organizations to which you belong which exclude women as members. And if you are not going to resign, would you please state briefly your reasons for concluding that you are not going to resign.

Judge SMITH. I would be happy to, Senator.

[Response to questions follow:]

October 20, 1987

The Honorable Howard Metzenbaum
Committee on the Judiciary
United States Senate

Dear Senator Metzenbaum:

Enclosed please find my responses to your inquiries which you expressed at today's hearing before the Judiciary Committee. Thank you for giving me the opportunity to follow up the hearing with these written remarks.

Sincerely yours,

George C. Smith
Nominee
United States District Court
Southern District of Ohio

cc:
Senator Strom Thurmond

In response to your question on the Fraternal Order of Police (F.O.P.) and the International Association of Fire Fighters (I.A.F.F.) versus the City of Columbus case, I would clarify the situation as follows:

The case was heard by me on an emergency basis and the hearing lasted 12 to 13 hours. The application was for only a temporary order to stay the administering of an examination to police and fire applicants for promotion. The city of Columbus Charter provides for seniority. The City changed their rules immediately before the scheduled examination to the effect that seniority points would not be added to test scores as in the past. The City was represented by counsel. A full hearing was held (12 - 13 hours) and only a temporary decision was made to maintain the status quo until the case could be decided on the merits. There were no issues relative to discriminatory hiring or promotional actions. That case was and is in Federal court. The United States District Court judge overruled my "stay" order and allowed the exam to be given but <u>not</u> graded completely. Later the District Court judge returned the case to this court and I mediated a settlement on the F.O.P. portion and the balance was taken under advisement.

I am personally well acquainted with all parties and their counsel, and prior to the hearing I offered not to hear the case. All counsel agreed that I should continue and hear the case.

I hope this is responsive to your inquiry. Please do not hesitate to call me at (614) 462-3777 if your need further information on this matter.

This is in response to Senator Metzenbaum's question regarding my membership in clubs which may have restrictive memberships.

The club that I specifically discussed at today's hearing was the Athletic Club of Columbus. This is a family club, that is the facilities both athletic and social are open to the entire, immediate family. Women members can fall into anyone of three categories, however they do not have voting rights, just as some other male categories likewise do not.

My primary use of this club is the handicapped swimming accomodation. This I do as my only physical exercise and I do this on a consistent basis (4-6 times per week). This facility can not be duplicated. It is 5 minutes from the Courthouse and I park in the building next to the club. The swimming facility is open about 12 hours per day and on Saturday and Sunday. It is vital that I exercise in this manner as I am an amputee (left leg).

I would hope that the Committee would consider these exceptional circumstances as the members consider my nomination.

As to the other organizations, my participation is only on a casual basis and I am not familiar in detail with their policies or restrictions. I would be willing to cease membership if the Committee believes that the membership is restrictive.

Per your request, attached is a list of organizations where I hold membership.

Attachment for Question 11, Part IV

Fraternal Order of Eagles (Linden Aerie) 3800 Westerville Rd. Columbus, Ohio 43224	Fraternal/ Social
Athletic Club of Columbus 136 E. Broad St. Columbus, Ohio 43215	*Athletic/ Social
Fraternal Order of Police Assoc. 514 S. High St. Columbus, Ohio 43215	Fraternal
Columbus Maennerchor 966 S. High St. Columbus, Ohio 43206	Social/ Singing
Germania Singing and Sport Society 543 S. Front St. Columbus, Ohio 43215	Social/ Singing
Crews Nest Put-In Bay, Ohio 43456	Boating/ Swimming
Triangle Masonic Lodge 3880 Reed Road Columbus, Ohio 43220	Fraternal/ Religious
Scottish Rite 34 N. 4th St. Columbus, Ohio 43215	Fraternal/ Religious
Aladdin Temple Shrine 3850 Stelzer Road Columbus, Ohio 43219	Fraternal/ Charitable
Tri-Village Shrine Club P.O. Box 21441 Columbus, Ohio 43221	Fraternal/ Charitable
Piave Club 2374 Park Lane Dr. Columbus, Ohio 43229	Social/ Italian American
Shamrock Club 1046 Hillsdale Dr. Columbus, Ohio 43224	Social/ Irish American

*Primary use is handicapped swimming facility as applicant is an amputee.

Attachment for Question 11, Part IV

The Agonis Club 1003 Kenwood Lane Columbus, Ohio 43220	Sports/ Social
Sessions Society 2485 Billiton Court Columbus, Ohio 43220	Charitable/ Art
Alpha Tau Omega Fraternity and Alumni P.O. Box 14432 Columbus, Ohio 43214	Fraternal/ College
Phi Delta Phi c/o College of Law 1659 N. High St. Columbus, Ohio	Law Fraternity

GEORGE C. SMITH
JUDGE

COURT OF COMMON PLEAS (814) 482-3777

October 27, 1987

Mr. Steve Metalitz
Senate Judiciary Committee
SD 224
Dirksen Senate Building
First and Constitution Ave., N.E.
Washington, D.C. 20501

Dear Mr. Metalitz:

Pursuant to your request for additional information regarding club memberships, I am submitting this supplemental response.

As to the Athletic Club of Columbus, I do feel that women participate on a full basis except for voting rights as explained previously. I am on record as a past president and board member and as such I proposed that the by-laws be changed to include women in all phases of membership activity. Many agree with me and the support is ever-increasing. I shall continue to urge this change.

I do believe that continued membership in this organization, due to the nature of the activites being family oriented, would not be inconsistent with my status as a federal judge.

However, there are several organizations that are primarily male oriented with only occasional participation by women. Although my participation in these organizations is only on a casual basis, I intend to withdraw from the following:

GEORGE C. SMITH
JUDGE

COURT OF COMMON PLEAS (614) 462-3777

Fraternal Order of Eagles - Fraternal/Social
Fraternal Order of Police Assoc. - Fraternal
Piave Club - Social/Italian American
Shamrock Club - Social/Irish American
The Agonis Club - Sports/Social

The balance of the organizations have full participation by women members affiliate-type organizations. I too believe that memberships in these organizations would not be inconsistent with my status as a federal judge. I would list them as follows:

Columbus Maennerchor - Social/Singing
Germania Singing and Sport Society - Social/Singing
Crews Nest - Boating/Swimming
Triangle Masonic Lodge - Fraternal/Religious
Scottish Rite - Fraternal/Religious
Aladdin Temple Shrine - Fraternal/Charitable
Tri-Village Shrine Club - Fraternal/Charitable
Sessions Society - Charitable/Art

I hope this reflects adequately our conversations and your opinion of the purpose of this inquiry and the difference between these organizations.

Respectfully submitted,

George C. Smith

George C. Smith
Nominee
U.S. District Court
Southern District of Ohio

GCS/go

GEORGE C. SMITH
JUDGE

October 29, 1987

The Hon. Howard Metzenbaum
United States Senate
Russell Building, Room 140
Washington, D.C. 20510

Dear Senator Metzenbaum:

This is to inform you that I have resigned from the Athletic Club of Columbus effective October 29, 1987.

Very truly yours,

George C. Smith

George C. Smith
Nominee

Senator METZENBAUM. Senator Thurmond has some questions for Mr. Mukasey and Judge Smith to answer for the record. Other members may have questions as well.

[Response to questions follow:]

October 20, 1987

The Honorable Strom Thurmond
Committee on the Judiciary
United States Senate

Dear Senator Thurmond:

Enclosed please find my responses to your inquiries which you expressed at today's hearing before the Judiciary Committee. Thank you for giving me the opportunity to follow up the hearing with these written remarks.

Sincerely yours,

George C. Smith
Nominee
United States District Court
Southern District of Ohio

cc:
Steve Metalitz

QUESTIONS FOR JUDGE GEORGE C. SMITH, OF OHIO, FOR THE SOUTHERN DISTRICT OF OHIO FROM SENATOR THURMOND

1. JUDGE SMITH, I CONSIDER JUDICIAL TEMPERAMENT TO BE A PREREQUISITE FOR A FEDERAL JUDGE. WOULD YOU GIVE ME YOUR THOUGHTS ON THIS SUBJECT?

ANSWER: JUDICIAL TEMPERAMENT IS A CRITICAL PREREQUISITE FOR A FEDERAL JUDGE ESPECIALLY AT THE TRIAL LEVEL. A BUSINESS-LIKE, WELL ORGANIZED APPROACH TO THE HANDLING OF A LAWSUIT IS A NECESSARY INGREDIENT. BEING ABLE TO CALMLY CONDUCT HEARINGS WITH A FIRMNESS NECESSARY TO MAINTAIN CONTROL IS A MUST. PREPARATION IS A MUST TOO.

PRE-TRIAL SETTLEMENT CONFERENCES NECESSITATE THE ADROIT STEERING OF NEGOTIATIONS TO A POINT WHERE ALL SIDES FEEL THEY ARE BEING FAIRLY TREATED BY AN OBJECTIVE MEDIATOR, THE TRIAL JUDGE. A FRIENDLY AND CONVINCING MANNER IS NECESSARY TO ACHIEVE THE PROPER TEMPERAMENT WHICH OFTEN WILL DIMINISH HOSTILITY BETWEEN ADVOCATES AND RESULT IN A SETTLEMENT.

ALL IN ALL, MY EXPERIENCE AS A TRIAL JUDGE OF MORE THAN 7 YEARS HAS LED ME TO THE CONCLUSION THAT, IN ADDITION TO THE ABOVE, COURTESY AND A PLEASANT ATTITUDE ARE IMPORTANT. ALSO A WILLINGNESS TO ACCOMODATE THE PARTIES AND THEIR SCHEDULES, IN A REASONABLE MANNER, WILL RESULT IN A PROPER JUDICIAL TEMPERAMENT AND CONSEQUENTLY SUCCESSFUL JUDICIAL ADMINISTRATION.

2. JUDGE SMITH, ARTICLE III, SECTION 1 OF THE CONSTITUTION INVESTS IN THE CONGRESS PLENARY POWER AS TO "ORDAIN AND ESTABLISH" SUCH INFERIOR FEDERAL COURTS AS IT SEES FIT. TO WHAT EXTENT, AS A DIRECT FUNCTION OF THAT POWER, IS CONGRESS EQUALLY EMPOWERED TO LIMIT THE JURISDICTION OF LOWER FEDERAL COURTS OVER VARIOUS CLASSES OF CASES AND CONTROVERSIES?

ANSWER: THE CONSTITUTION IS THE BASIS OF GOVERNMENTAL FUNCTION, THE FRAMEWORK OF WHICH EMPLOYS THREE SEPARATE AND DISTINCT BRANCHES OF GOVERNMENT. EACH BRANCH IS TO OPERATE WITHOUT UNDUE INFLUENCE FROM THE OTHERS.

WHILE CONGRESS IS EMPOWERED TO LIMIT THE JURISDICTION OF LOWER FEDERAL COURTS IT CAN NOT DO SO IN VIOLATION OF THE CONSTITUTION. PARADOXICALLY, THE LOWER FEDERAL COURTS CAN NOT INFRINGE ON THE LEGISLATIVE PROCESS THAT THE CONSTITUTION RESERVES FOR THE LEGISLATIVE BRANCH.

THE LOWER FEDERAL COURTS ARE EMPLOYED TO ADJUDICATE CASES THAT ARE PROPERLY BEFORE THEM, e.g., REAL CLAIMS THAT INVOLVE CONTROVERSIES AND THAT MEET THE REQUIREMENTS OF STANDING, RIPENESS AND ARE NOT MOOT. THE COURT IS LIMITED BY THE CONSTITUTION IN DECIDING THESE CASES AND CONTROVERSIES AND SHOULD NOT IMPOSE BROAD DECISIONS WHICH INFRINGE ON ANOTHER BRANCH OF GOVERNMENT.

THE LOWER FEDERAL COURTS ARE NOT LEGISLATURES. THEY ARE ILL-EQUIPPED TO FILL THE ROLE OF CONGRESS. THE COURTS DO NOT HAVE THE RESOURCES AFFORDED THE OTHER BRANCHES OF GOVERNMENT. IN

ESSENCE THE LOWER FEDERAL COURTS SHOULD EMPLOY AT ALL TIMES JUDICIAL RESTRAINT AND NOT TRESPASS ON THE INTENT OF THE CONSTITUTION WITH REGARD TO THE OTHER BRANCHES OF GOVERNMENT.

Senator METZENBAUM. I do not want to miss the roll call vote. This meeting stands adjourned.

Judge SMITH. Thank you for your courtesy, Senator.

Senator METZENBAUM. Thank you.

[Whereupon, at 3:25 p.m., the committee was adjourned.]

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Robert E. Cowen

2. Address: List current place of residence and office address(es).

137 Philip Drive
Princeton, New Jersey 08540

United States District Judge
402 E. State Street
Room 342
Trenton, New Jersey 08608

3. Date and place of birth.

September 4, 1930
Newark, New Jersey

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Toby Cligman Cowen. Spouse is presently a homemaker, as well as caring for an elderly mother. Self-employed as a freelance editor and writer, but due to family commitments these activities have been drastically curtailed in the four years last past. Last employed in 1981 by the State of New Jersey, Department of Human Services, Trenton, NJ 08625, as a Supervisor, Internal Communications. Her immediate supervisor was Mr. Nicolas Scalera. She currently has a New Jersey real estate license and for nine months worked with the Princeton office of Schlott Realtors and is now associated with Schlott's First Referral, Inc.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Drake University
Des Moines, Iowa
1948 - 1952
B.S. - August, 1952

Columbia Law School
New York, New York
September, 1952 - December, 1952
Discontinued to enter military service.

Rutgers Law School
Newark, New Jersey
1955 - 1958
L.L.B. - June, 1958

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

September, 1952 - December, 1952
Columbia Law School
New York, New York
Discontinued to enter military service.

January, 1953 - December, 1954
United States Army

January, 1955 - August, 1955
Shelton Hotel Restaurant
c/o Shelton Hotel
Lexington Avenue
New York, New York
(No longer in business)

September, 1955 - May, 1956
Unemployed/Student
Rutgers Law School
Newark, New Jersey

June, 1956 - August, 1956
Law Clerk
A. Robert Rothbard, Esq.
Rothbard, Rothbard & Kohn, Esqs.
1180 Raymond Blvd.
Newark, NJ 07102
(201) 622-7713

September, 1956 - May, 1957
Unemployed/Student
Rutgers Law School
Newark, New Jersey

June, 1957 - August, 1957
Law Clerk
A. Robert Rothbard, Esq.
Rothbard, Rothbard & Kohn, Esqs.
1180 Raymond Blvd.
Newark, NJ 07102
(201) 622-7713

September, 1957 - May, 1958
Unemployed/Student
Rutgers Law School
Newark, New Jersey

June, 1958 - June, 1959
Law Clerk
Honorable Walter H. Conklin (Deceased)
Judge, Superior Court of New Jersey

July, 1959 - September, 1961
Associate
Schreiber, Lancaster & Demos, Esqs.
60 Park Place
Newark, New Jersey 07102

September, 1961 - December, 1969
1180 Raymond Blvd.
Newark, New Jersey
Self-employed in the practice of law

December, 1969 - June, 1970
Assistant County Prosecutor
Essex County Prosecutor's Office
Essex County Courthouse
Newark, New Jersey 07102

June, 1970 - October, 1973
Deputy Attorney General
Office of the Attorney General
Division of Criminal Justice

State of New Jersey
State House Annex
Trenton, New Jersey 08625

October, 1973 - November, 1978
Director, Ethics and Judicial Administration
Administrative Office of the Courts
State House Annex
Trenton, New Jersey 08625

December, 1978 - November, 1985
United States Magistrate
United States District Court for the
District of New Jersey
U.S. P.O. & Courthouse Bldg.
Room 333
Newark, New Jersey 07101

November, 1985 - Present
United States District Judge
United States District Court for the
District of New Jersey
402 E. State Street
Room 342
Trenton, New Jersey 08608

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes
January, 1953 - December, 1954
United States Army
Corporal
US 51228306
Honorable Discharge

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conference of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association
New Jersey State Bar Association
National Association of Bar Counsel (Former Member)
Essex County Bar Association (Former Member)
National Council of United States Magistrates (Former Member)
Federal Judges Association
The Historical Society of the United States District Court for the District of New Jersey

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None.

Please list all other organizations to which you belong.

Appalachian Mountain Club
Sierra Club
Adirondack Mountain Club
Metedeconk River Yacht Club
U.S. Power Squadron (Trenton Falls Squadron)
Adjunct Professor Seton Hall Law School
(Professional Responsibility; Torts and

Insurance Law) (Note: I have not taught during the past two years)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of New Jersey
Admitted 1958

United States District Court
District of New Jersey
Admitted 1958

United States Court of Appeals for the Third Circuit
Admitted 1978

12. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Attached as Exhibit "A" is a copy of a speech I delivered on March 13, 1987, for the Greater Princeton Chamber of Commerce commemorating the Bi-Centennial. Also attached as Exhibit "B" is a portion of a pamphlet distributed at a seminar sponsored by the Institute for Continuing Legal Education, at which I was a speaker. The portion submitted represents my written contribution to the program.

13. Health: What is the present state of your health?

Excellent

List the date of your last physical examination.

July, 1986

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

November, 1985 - Present
United States District Judge
United States District Court for
the District of New Jersey
Appointed

December, 1978 - November, 1985
United States Magistrate
United States District Court for
the District of New Jersey
Appointed
Jurisdiction: To hear and determine all cases pursuant to 28 U.S.C. §636.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

1. Attached as Exhibit "C", I have provided copies of some of my published Opinions. Also attached as Exhibit "D", are a representative sampling of unpublished Opinions.

2. None.

3. None.

16. Public Office: State (Chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed.

December, 1969 - June, 1970
Essex County Prosecutor's Office
Essex County Courthouse
Newark, New Jersey 07102
Assistant County Prosecutor
Appointed

June, 1970 - October, 1973
Office of the Attorney General
Division of Criminal Justice
State of New Jersey
State House Annex
Trenton, New Jersey 08625
Deputy Attorney General
Appointed

October, 1973 - November, 1978
Administrative Office of the Courts
State House Annex
Trenton, New Jersey 08625
Director, Ethics and Judicial Administration
Appointed

State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Law Clerk
Honorable Walter H. Conklin (Deceased)
Judge, Superior Court of New Jersey
June, 1958 - June, 1959

2. whether you practiced alone, and if so, the addresses and dates;

Self-employed in the practice of law
1180 Raymond Blvd.
Newark, New Jersey
September, 1961 - December, 1969

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

July, 1959 - September, 1961
Schreiber, Lancaster & Demos, Esqs.
60 Park Place
Newark, New Jersey 07102
Associate

December, 1969 - June, 1970
Essex County Prosecutor's Office
Essex County Courthouse
Newark, New Jersey 07102
Assistant County Prosecutor

June, 1970 - October, 1973
Office of the Attorney General
Division of Criminal Justice
State of New Jersey
State House Annex
Trenton, New Jersey 08625
Deputy Attorney General

October, 1973 - November, 1978
Administrative Office of the Courts
State House Annex
Trenton, New Jersey 08625
Director, Ethics and Judicial Administration

December, 1978 - November, 1985
United States District Court for the
District of New Jersey
U.S. P.O. & Courthouse Bldg.
Room 333
Newark, New Jersey 07101
United States Magistrate

November, 1985 - Present
United States District Court for the
District of New Jersey
402 E. State Street
Room 342
Trenton, New Jersey 08608
United States District Judge

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

June, 1958 - June, 1959
As law clerk my sole assignment and experience was performing legal research and writing draft opinions and memoranda.

July, 1959 - September, 1961
As an associate with Schreiber, Lancaster & Demos, Esqs., I initially prepared cases for trial and, thereafter, was engaged in active trial of numerous matters.

September, 1961 - December, 1969
General practice of law with primary emphasis on personal injury and products liability litigation, commercial law and real estate. During this period of time, I continued a close association with the law firm of Schreiber, Lancaster & Demos, Esqs., by whom I was often employed on a per diem basis.

December, 1969 - June, 1970
Assigned the trial of criminal indictments before the Essex County Criminal Court.

June, 1970 - October, 1973
Investigation, presentation to the statewide grand jury and trial of major criminal matters throughout the State of New Jersey.

October, 1973 - November, 1978
Attorney-in-Charge of enforcing professional and judicial ethics throughout the State of New Jersey, as well as miscellaneous assignments from the Chief Justice of the Supreme Court and Administrative Director of Courts in the area of judicial administration.

December, 1978 - November, 1985
Certified by the District Court to perform the full range of civil and criminal duties under the Federal Magistrates Act. These duties have included the preparation and trial of civil and criminal misdemeanor cases, serving as Special Master by designation of the Court of Appeals for the Third Circuit, hearing and determining non-dispositive civil motions, presiding over the preparation of Pretrial Orders preparatory for trial, as well as hearing and filing Report and Recommendations in case dispositive civil motions.

November, 1985 - Present
Federal trial court judge with plenary jurisdiction over civil and criminal matters arising under federal law.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clients, prior to government service, were individuals from all walks of life who were seeking damages for personal injury, representation of insurance companies defending personal injury or property damage claims, small to medium size business peop: involved in commercial contracting or disputes, and individuals buying or selling residential real estate.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:

(a) federal courts;

5%

(b) state courts of record;

90%

(c) other courts;

5%

3. What percentage of your litigation was:

(a) civil;

(b) criminal.

While in private practice, 95% civil, 5% criminal. While with the Essex County Prosecutor's Office and Office of the Attorney General, 100% criminal. As Director of the Division of Ethics and Professional Responsibility, all litigation was before ethics committees and all court appearances primarily before the New Jersey Supreme Court.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel or associate counsel.

As associate counsel, tried to verdict were approximately 25 cases. As sole counsel, tried to verdict were approximately 100 cases.

5. What percentage of these trials was

(a) jury;

95%

(b) non-jury.

5%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

For the past nine years I have been a federal judicial officer, seven years as a United States Magistrate and almost two years as a United States District Judge. Attached as Exhibit "E" is a list both criminal and civil cases I have tried as a Magistrate, along with a list of the names and addresses of the attorneys who appeared on those cases. Attached as Exhibit "F" is a list of both criminal and civil cases I have tried as a District Judge, along with a list of the names and addresses of the attorneys who appeared on those cases.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege).

The most significant legal matter in which I was engaged and for which I am to date most proud is the contribution I made to the professional and judicial ethics structure in the State of New Jersey. In the wake of the Watergate scandal I was selected by Chief Justice Garvin to head a new division in the New Jersey court system. This position involved a complete recasting of the ethics structure as it was then in effect, rewriting the rules concerning the procedure to be utilized, and implementation of an effective and fair process for the adjudication of complaints against both judges and lawyers. The undertaking was of mammoth proportions since I had absolutely no guidance from anyone in the State of New Jersey, and there was considerable reluctance in many quarters to change in any significant way the prevailing system. With quite a bit of help from the American Bar Association and a number of public minded lawyers and judges, within five years New Jersey had in place an ethics structure which was second to none in the country. To this very day I look at my accomplishments in that area as being my most significant professional undertaking to date. I served in that position for five years and succeeded in bringing a moribund administrative system into a recognized state-wide agency which commanded the admiration of not only the public but, eventually, the very lawyers who were subject to its jurisdiction. I remain active as a consultant in the area of ethics in New Jersey and I am frequently contacted concerning the further upgrading of the system.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

None.

Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Not applicable.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

These is no present or potential conflict of interest of which I am aware. If a conflict did appear, I would forthwith sever any relationship so as to prevent such a conflict from arising. Should the nature of the case be such that a severance would not preclude a conflict, I would disqualify myself from hearing the matter.

Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Same as above.

3. Do you have any plans, commitments, or agreements to pursue outside employment with or without compensation, during your service with the court? If so, explain.

Yes. I would like to continue my position as Adjunct Professor with Seton Hall Law School (although it should be noted that I have not taught for the past two years), if at all possible. However, if my association with the law school in any way impinges on my duties as United States Circuit Judge, I would not hesitate to discontinue that association forthwith.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the Executive Personal Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

Attached and Exhibit "G" is a copy of my Financial Disclosure Report for 1986. My earnings for 1987 will be almost identical to my 1986 financial statement which I have attached.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

Financial net worth statement attached as Exhibit "H".

6. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During the last 17 years I have been in public employment in one form or another. During most of this period of time, and especially during the latter years, I have on a yearly basis tried to participate in at least two seminars or bar sponsored meetings where I served as a panelist or delivered a major address. Most of these activities have involved substantial time and preparation since printed materials were given to the attendees. All of these functions were either bar sponsored or coordinated with federal, state or local bar associations, or with the New Jersey Institute for Continuing Legal Education. All of my attendance was completely without fee or any other compensation. I continue to strive to make at least two appearances yearly in similarly sponsored activities.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list with dates of membership.

None.

What have you done to try to change these policies?

Not applicable.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

No.

If so, did it recommend your nomination?

Not Applicable.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

In the Spring of 1987, I received a telephone call from the Department of Justice inquiring if I would be interested in being interviewed for a vacancy in the United States Court of Appeals for the Third Circuit. I advised that I would, and an appointment was made from me to be interviewed by members of the Department of Justice in Washington during April, 1987. Prior to the interview, I forwarded to the Department of Justice opinions which I entered, as well as copies of speeches and other seminar related materials which I prepared. Copies of these materials are also attached to this questionnaire as Exhibits "A - D". At the Department of Justice I met and was interviewed by four or five gentlemen. After the above, I was interviewed by a Special Agent of the Federal Bureau of Investigation, as well as a representative of the American Bar Association, both filing investigative reports concerning my fitness and qualifications.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of the government. Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

A problem is a "cause", a grievance is a "case". Federal courts are constituted to hear cases and controversies, not to resolve social problems or explore conflicting social demands upon available resources. Judges should resolve only cases before them based upon the particular set of facts of that case; not resolve a "cause" which is a problem with many possible fact patterns not before the court. Legislators have been elected to resolve causes, social concerns and deep-seated conflicting societal interests. A court seldom, if ever, has before it all points of contention which should be taken into consideration to resolve the important conflicting social demands on finite resources and revenues.

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

Social problem solving under our system of government is delegated to the legislature, an equal and coordinate branch of government. The legislature has been given the tools to explore, evaluate and determine how conflicting social problems should be resolved. When courts render decisions beyond the facts of the case at bar, such pronouncements have precedential authority in matters that were never properly adjudicated by the court, and effect litigants who were not given an opportunity to be heard.

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

Legislatures speak for the citizens and should impose affirmative duties. A principle of statutory construction holds that if the legislative branch intends something to happen, it would state it in a clear manner. Silence on an issue cannot and should not be interpreted as creating an affirmative obligation. The judicial branch must interpret what is already written, not create duties and obligations where the legislature has not spoken. Silence of the legislature is not to be taken by the judiciary as tacit approval for a judge to find a private cause of action where none has been legislatively recognized. The judiciary

should be aware that in government, as in private life, there is seldom sufficient funds and resources to cure every social demand or to forward every desired end. Courts have not been constituted to determine which social needs and obligations are the most commanding and have first call upon the public treasury. It is particularly inappropriate for a court, except in the most unusual of circumstances, to judicially upset the elected legislators' determination concerning the expenditure of public funds, and to impose upon the public the court's view of how, in what amount and with what priority public funds should be utilized.

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

Standing to sue and ripeness are essential prerequisites to a case or controversy. Without these two indispensable elements, there is before the court a cause - - - not a case or controversy. Courts have been constituted to resolve cases and controversies (grievances), not to resolve social problems which are on the horizon (causes). The judicial branch has found too many causes of action where the legislature has not conferred jurisdiction. This is particularly true in "finding" private causes of action where the legislature has ordained none and "finding" private causes of action in the broadsweep of constitutional language. In addition, jurisdiction should be tightened in the federal courts to allow only causes with real federal interest, e.g., federal question jurisdiction, with the partial elimination of diversity subject matter jurisdiction. The totally compelling reason for diversity jurisdiction no longer prevails. The time is long past when a citizen of one state could fear that engaging in litigation in the state court of a sister state would cast the out-of-state litigant as a foreigner. State court judges are equally able as federal judges to process state court matters.

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Judges have enough to do managing their own caseload and are ill-equipped to administer school systems, prisons and zoning boards of adjustment. Local executive departments must comply with the law on their own after being ordered. If they will not, the court can hold them in contempt - - - but the court should with great caution take over executive duties. Judges are trained as lawyers and not as administrators and executives. Few judges have the ability, training or inclination to manage either directly or through surrogates, institutions, agencies and boards performing executive duties, whether governmental or in the private sector.

EXHIBIT "G"

FORM 10 **FINANCIAL DISCLOSURE REPORT**

ANNUAL REPORT DUE BY MAY 15, 1987 FOR CALENDAR, FISCAL OR OPTIONAL ANNUAL REPORTERS AND CERTAIN ANNUAL EMPLOYEES PER 28 USCA App. 1 401 et seq.

PERSON REPORTING (LAST NAME, FIRST, MIDDLE INITIAL)	COURT OR DEPARTMENT	REPORT FOR CALENDAR YEAR
COHEN, ROBERT E.	U.S. District Court for the District of New Jersey	1986
TITLE	REPORT TYPE (CHECK APPROPRIATE TYPE)	
UNITED STATES DISTRICT JUDGE		
ADDRESS OF OFFICE (NUMBER, STREET, CITY, STATE AND ZIP CODE)		
402 E. State Street, Rm. 342 Trenton, NJ 08608		

IMPORTANT NOTE: *Please read the instructions accompanying this form. The report is designed for and should include information pertaining to your spouse and dependent children, if any. Attach additional sheets if needed, identifying each attachment by showing your name and the section being continued. Complete all parts. Check the NONE box when you have no information to report. Compare and reconcile this year's report with last year's. Type or print clearly. Sign this form on the reverse side.*

I. NON-INVESTMENT INCOME *See Page 7 of Instructions.*

	SOURCE (and, for Honoraria only, DATE RECEIVED)	TYPE	AMOUNT (Honoraria, see Instructions)
None ☐			
(S)	State of New Jersey	Pension	
(S)	Schlott Realtors	Commission	

II. & III. INVESTMENTS AND TRUSTS: INCOME (II) and VALUE (III)

DESCRIPTION OF ASSETS INCLUDING TRUST ASSETS *See Page 8 of Instructions.*	II. Income *See Page 11 of Instructions.*									III. Value *See Page 11 of Instructions.*							
	Type of Income	Amount (A–H)								Value (J–P)							
		J	K	L	M	N	O	P			J	K	L	M	N	O	P
None ☐ (Held during 1986)																	
(J) Allied Signal Inc.	Div.	X								AA	X						
(J) Citicorp	Div.	X								AA		X					
(J) Dayton-Hudson Corp.	Div.	X								AA	X						
(J) Emerson Electric Co.	Div.	X								AA		X					
(J) Handleman Co.	Div.	X								AA		X					
(J) International Business Machines	Div.	X								AA		X					
(J) Johnson and Johnson	Div.	X								AA		X					
(J) U.S. Air Group	Div.	X								AA	X						
(J) Abbott Laboratories	Div.	X								AA	X						
(J) Henley Group	Div.									AA	LESS THAN $1,000						

☐ CHECK THIS BOX IF APPLICABLE:

II. & III. INVESTMENTS AND TRUSTS: INCOME ($10 and VALUE ($100 Limit)

DESCRIPTION OF ASSETS (INCLUDING TRUST ASSETS) See Page 8 of Instructions	II. Income (See Page 10 of Instructions) Type of Income	Amount of Income	III. Value (See Page 11 of Instructions) Transaction Reported	Value at Close of Year
(J) Pepsico Inc.	Div.	X	AA	X
(J) Union Electric Co.	Div.	X	AA	X
(J) Temple Inland	Div.	X	AA	X
(J) Baxter Trevenol Labs	Div.	X	AA	X
(J) Times Mirror	Div.	X	AA	X
(J) GSF & G Corp.	Div.	X	AA	X
(J) BGR Precious Metals	Div.	[illegible]	AA	X
(J) Various Unit. Muni. Inv. Trusts (owned beginning of 1986)	Int.	X	AA	X
(J) Various Unit. Muni. Inv. Trusts (owned end of 1986)	Int.	X	AA	X
(J) Dean-Witter U.S. Gov. Securities	Int.	X	AA	X
(J) Dean-Witter Conv. Sec. Trust	Int.	X	AA	X
(J) Dean-Witter Tax Free Securities	Int.	X	AA	X
(J) Balcor Realty Inv. 85-3	Int.	[illegible]	AA	X
(J) Carlyle Real Estate Limited (partnership XV)	Int.	[illegible]	AA	X
(J) Dean-Witter Active-Assets Money Trust	Int.	X	AA	X

Sch. VIII

PLEASE CHECK THIS BOX IF APPLICABLE:

☐ Differences between investments reported last year and those reported this year, which are not explained in Part VII (Transactions) or ... reflect changes in investments that the Act exempts from disclosure.

FINANCIAL DISCLOSURE REPORT (Cont.)

PERSON REPORTING (LAST NAME, FIRST, MIDDLE INITIAL)
COHEN, ROBERT S.

IV. GIFTS (None ☒)

A. Gifts of transportation, lodging, food, or entertainment. *See Page 13 of Instructions.*

SOURCE	DESCRIPTION

B. Other Gifts *See Page 14 of Instructions.*

		VALUE

V. REIMBURSEMENTS *See Page 14 of Instructions.*

SOURCE	DESCRIPTION
(None ☒)	

VI. LIABILITIES *See Page 14 of Instructions.*

DESCRIPTION (Include Identity of Payor or Creditor)	Amount in thousands of dollars				
	10+ to 15	15+ to 60	60+ to 100	100+ to 250	250+
(None ☒)					

VII. TRANSACTIONS

See Page 15 of Instructions.

DESCRIPTION (Include Identity of Other Party where applicable)	DATE	SALE	PURCHASE	EXCHANGE	Value of Transactions in thousands of dollars (Mark appropriate block)						Capital Gains in thousands of dollars (Mark appropriate block)						
											None						
(J) Temple Inland (None ☐)	1/31/86	X			X								X				
(J) Unit. Muni. Inv. TR FD 8	2/3/86		X			X					N/A						
(J) Dayton Hudson Corp.	2/13/86	X			X								X				
(J) Times Mirror	2/19/86		X			X					N/A						
(J) Handleman Co.	2/19/86	X				X							X				
(J) Baxter Travenol Labs	2/16/86		X		X						N/A						
(J) U.S. Air Group	2/22/86	X			X						NONE						

VIII. POSITIONS *See Page 16 of Instructions.*

POSITION	NAME OF ORGANIZATION
None ☒	

IX. AGREEMENTS *See Page 17 of Instructions.*

DATES	PARTIES	TERMS
None ☒		

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge/at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or minor child or children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

SIGNATURE Robert R. Cowen DATE April 27, 1987

NOTE: Any individual who knowingly and willfully falsifies, or who knowingly and willfully fails to file this report may be subject to civil and criminal sanctions (28 U.S.C.A. App. 1, § 304 and 18 U.S.C. § 1001).

MAILING THIS FORM

Judicial Officers and Employees mail original and two copies of this form to:

Judicial Ethics Committee
Room 3411, U.S. Courthouse
3rd & Constitution Ave., N.W.
Washington, D.C. 20001

. . . Deliver one copy to the Clerk of the Court on which you sit or serve.
Judicial Employees not associated with a specific court, such as employees of the Administrative Office and the Federal Judicial Center need not file a copy with any Clerk.

DESCRIPTION (Include Identity of Other Party where applicable)	DATE	SALE	PURCHASE	EXCHANGE	Value of Transactions in Thousands of Dollars (Mark appropriate block)						Current Value in Thousands of Dollars (Mark appropriate block)							
											None							
None ☐ (cont'd)																		
(J) Unit Sears Tait Muni. Intrm.	5/30/86		X					X			N/A							
(J) Pepsico, Inc.	8/21/86		X		X						N/A							
(J) Union Electric Co.	9/18/86		X			X					N/A							
(J) Dean Witter Tax Exempt	12/19/86		X			X					N/A							
(J) Baxter Travenol	12/22/86	X			X						NONE							
(J) USF & G Corp.	12/22/86		X		X						N/A							
(J) Times Mirror	12/29/86	X				X						X						

MICHAEL B. MUKASEY

RECEIVED JUL 2 9 1987

Birth:	July 28, 1941	Bronx, New York
Legal Residence:	New York	
Marital Status:	Married	Susan E. Bernstock Saroff 2 step-children
Education:	1959 - 1963	Columbia College A.B. degree
	1964 - 1967	Yale Law School LL.B. degree
Bar:	1967	New York
Experience:	1967 - 1972	Webster Sheffield Fleischmann Hitchcock & Brookfield Associate
	1972 - 1976	Assistant U. S. Attorney Southern District of New York Criminal Division (Chief, Official Corruption Unit 1975-1976)
	1976 - present	Patterson, Belknap, Webb & Tyler Associate 1976-1978 Member 1978 - present
Office:	30 Rockefeller Plaza New York, new York 10112 212 698-2610 212 698-2500	
Home:	103 East 86th Street New York, New York 10028	
	19 Oyster Shores Road East Hampton, new York 11937	

To be United States District Judge for the Southern District of New York

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Michael Bernard Mukasey

2. Address: List current place of residence and office address(es).

Office: Patterson, Belknap, Webb & Tyler
30 Rockefeller Plaza
New York, New York 10112
(212) 698-2610
(212) 698-2500

Home: 103 East 86th Street
New York, New York 10028

Vacation Home: 19 Oyster Shores Road
East Hampton, New York 11937

3. Date and place birth.

July 28, 1941
Bronx, New York

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married since July 14, 1974 to Susan Elaine Bernstock Saroff Mukasey, an elementary school teacher who specializes in teaching children with learning disabilities. She tutors privately (self-employed) and is employed by

Ramaz School
125 East 85th Street
New York, New York 10028

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Columbia College -- September 1959 - June 1963
A.B. June, 1963
Yale Law School -- September 1964 - June 1967
LL. B. June 1967

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

July 1963	Craig Lumber Company Craig, CO
July 1963 to August 1964	Construction company in Columbine, CO and beer distributor in Craig, CO (I do not

	recall names of companies)
May 1964	Echelons Office Temporaries 485 Madison Avenue New York, New York
May 1964 to September 1964	United Press International 1060 Broad Street Newark, New Jersey
June 1965 to August 1965	National Labor Relations Board (Chairman Frank W. McCulloch) 1717 Pennsylvania Ave., N.W. Washington, D.C.
September 1966	Yale Law School New Haven, CT (Assistant in Instruction)
June 1966 to September 1966	Webster Sheffield Fleischmann Hitchcock & Brookfield (Supervisor: Donald J. Cohn, Esq.) One Rockefeller Plaza New York, New York 10112
September 1967 to August 1972	Webster Sheffield Fleischmann Hitchcock & Brookfield One Rockefeller Plaza New York, New York 10112
August 1972 to March 1976	U.S. Dept. of Justice U.S. Attorney's Office One St. Andrews Plaza New York, New York 10007
April 1976 to present	Patterson, Belknap, Webb & Tyler 30 Rockefeller Plaza New York, New York 10112

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

   No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

   Board of Editors, Yale Law Journal, 1965-1967

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

   American Bar Association

New York State Bar Association
(Chairman, Committee on Public Access to Information and Proceedings, 1984 - present)

Association of the Bar of the City of New York
(Federal Courts Committee -- 1979-1982)
(Communications Law Committee -- 1983-1986)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong (such as civic, educational "public interest" law, etc.).

National Conference on Soviet Jewry
Anti-Defamation League of B'nai B'rith -- National Legal Affairs Committee

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

New York - December 21, 1967
U.S. District Court - S.D.N.Y. - January 23, 1969
U.S. District Court - N.D.N.Y. - October 12, 1982
U.S. Court of Appeals - Second Circuit - October 1, 1975
U.S. Court of Appeals - D.C. Circuit - June 26, 1978
U.S. Court of Appeals - Fourth Circuit - June 25, 1982
U.S. Court of Appeals - Third Circuit - December 29, 1983
U.S. Court of Appeals - Tenth Circuit - February 26, 1986
Supreme Court of the U.S. - November 5, 1979

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available by the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

a) Note: "Confrontation and the Hearsay Rule," 75 Yale Law Journal 1434 (1967)

b) Chapter: "Dealing With the Prosecutor" in Business Crimes: A Guide for Corporate and Defense Counsel, edited by Jeffrey Glekel (Practising Law Institute 1982)

c) Chapter: "The Discovery Phase of Libel Litigation" in Libel Litigation 1986 (Practising Law Institute 1986)

d) Article: "In Defense of a Vigorous U.S. Attorney" The New York Times December 2, 1985.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. June 1, 1987.

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position

was elected or appointed, and a description of the jurisdiction of each such court.

Not applicable.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Assistant U.S. Attorney
Southern District of New York (Criminal Division)
1972-1976 (Chief - Official Corruption Unit 1975-1976)
(appointed)

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Not applicable.

2. whether you practiced alone, and if so, the addresses and dates;

Not applicable.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

September 1967 - July 1972 -- associated with
Webster Sheffield Fleischmann Hitchcock &
Brookfield (now Webster & Sheffield),
1 Rockefeller Plaza, New York, New York 10020
(now 237 Park Avenue, New York, New York 10017).

August 1972 - March 1976 --
Assistant U.S. Attorney,
Southern District of New York,
Criminal Division
(Chief, Official Corruption Unit 1975-1976).

April 1976 - date --
Patterson, Belknap, Webb & Tyler,

intermittently since I left that office, including pre-indictment and post-conviction representation. Since 1977 I have specialized also in defense of libel cases.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

From 1967 to 1972 I appeared in court occasionally; thereafter, frequently.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

From 1972 to 1976, while I was an Assistant U.S. Attorney, all my appearances were in Federal Court; before and after that, about half were in New York State courts and the other half in various Federal courts.

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

From 1972 to 1976, while I was an Assistant U.S. Attorney, all my litigation was criminal; before that, all my litigation was civil; after that, my litigation was 90% to 95% civil and 5% to 10% criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

From 1967 to 1972, I participated as associate counsel in two cases tried to verdict.

From 1972 to 1976, which I was an Assistant U.S. Attorney, I tried approximately 20 cases to verdict; in all but three I was either chief counsel or sole counsel.

From 1976 to the present, after leaving the U.S. Attorney's Office, I tried five cases to verdict and was chief counsel in all. In addition, I tried two attorney disciplinary proceedings, one as co-chief counsel and the other as sole counsel.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

Of the approximately 20 trials while I was an Assistant U.S. Attorney between 1972 and 1976 two were non-jury trials and the remainder jury trials.

Of the five trials since I left the U.S. Attorney's Office four were jury trials and one non-jury.

30 Rockefeller Plaza, New York 10112
(member of the firm since April 1978).

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

(i) 1967-1972

After I graduated from law school, I was associated with Webster Sheffield Fleischmann Hitchcock & Brookfield. My practice included initially corporate, securities and litigation -- including, as to the first two, contract drafting and negotiation, and participation in public offerings representing both issuers and underwriters. During my last three years at this firm, my practice focused increasingly on civil litigation, including participation in products liability and securities fraud trials, labor and stock exchange arbitrations, and motion practice in state and federal courts.

(ii) 1972-1976

During this period, I was an Assistant U.S. Attorney for the Southern District of New York. My practice during this period consisted of criminal litigation on behalf of the government, including investigation and prosecution of narcotics, bank robbery, interstate theft, securities fraud, fraud on the government and bribery. My responsibilities included supervising federal agents in investigations, presentation of cases before grand juries, trials, appeals to the U.S. Court of Appeals for the Second Circuit, and supervision of other Assistant U.S. Attorneys in these activities. During this period, I tried approximately 20 cases and argued approximately 15 appeals to the U.S. Court of Appeals.

(iii) 1976 - date

From 1976 to date I have been practicing at Patterson, Belknap, Webb & Tyler. I have been a member of the firm since 1978. My practice at my current firm has centered on litigation during the entire period, including both civil litigation and counseling, and criminal defense litigation and counseling. I have been the lawyer with principal responsibility for virtually all the cases in which I participated and have supervised other lawyers in the handling of civil litigation.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Typical clients I have represented at the two law firms where I have worked have been both major corporations and other institutions, as well as smaller companies and individuals. Several clients during the past five years have been attorneys.

During my tenure as a prosecutor in the U.S. Attorney's Office I specialized in criminal law and have practiced that specialty as a defense lawyer

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Nemeroff v. Abelson, et al., 704 F.2d 652 (2d Cir. 1983)(appeal).

This appeal, which I argued and for which I wrote the brief, established the right of Alan Abelson and other defendants to recover attorneys' fees from the Boston firm of Hale and Dorr, and its plaintiff client, for prosecuting a stock fraud claim after it became apparent the claim was baseless. This case preceded the existence of Rule 11, Fed. R. Civ. P., which provides explicitly for the recovery of attorneys' fees in such cases.

Appellate court:
U.S. Court of Appeals for the Second Circuit

Appellate judges:
Jon O. Newman, Lawrence W. Pierce,
William H. Timbers

Opposing counsel:
Simon H. Rifkind, Robert Smith
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000

Co-counsel:
Andrew C. Freedman
Reavis & McGrath
345 Park Avenue
New York, NY 10154
(212) 486-9500

2. Udell v. New York News Inc., 124 A.D.2d 656, 507 N.Y.S.2d 904 (1986) (libel trial and appeal).

This case involved a libel claim by an attorney against my client, New York News Inc., based on an article that reported the plaintiff had pleaded his client guilty in a criminal case without knowing "the first thing" about the underlying facts. I was chief counsel for the defendant, and argued the appeal. The jury rendered a verdict for the plaintiff in the amount of $650,000, reduced on appeal to $75,000. A petition for leave to appeal to the

Court of Appeals is in process. The case was tried from June 3, 1985 to June 21, 1985.

The case is significant for the legal issues it raises with respect to the admissibility of a reporter's notes, and the standard of review under New York's gross irresponsibility rule. It is significant also as a hard-fought case at the trial level.

Trial court:
Supreme Court, Kings County

Trial judge:
The Hon. Irving S. Aronin
Supreme Court Building
360 Adams Street
Brooklyn, New York 11201

Appellate court:
Appellate Division, Second Department

Appellate judges:
Guy J. Mangano, J.P., Moses M. Weinstein, James F. Niehoff and Isaac Rubin

Opposing counsel:
Albert J. Brackley
16 Court Street
Brooklyn, NY 11242
(718) 625-5894

3. Peacock v. New York News Inc., Index No. 18616/79

This was a libel trial in which I was chief counsel representing the defendant. The plaintiff's name had been identified in a newspaper article as the alias of a notorious Harlem drug dealer -- a description conceded at the trial to have been false. The plaintiff claimed damage to reputation and psychological injury. The jury returned a verdict for defendant following a six-day trial in March, 1983.

This case presented substantial difficulties from the defense standpoint, including the subsequent firing of one of the reporters for allegely falsifying a story. That fact was kept out of evidence through a motion in limine.

Trial court:
Supreme Court, New York County

Trial judge:
The Hon. Martin Evans
New York County Courthouse
60 Centre Street
New York, NY 10007

Opposing counsel:
Steven Hyman
Hyman & Miner
24 East 21st Street
New York, New York 10010
(212) 777-8200

4. United States v. Stirling, et al., 571 F.2d 708 (2d Cir. 1978)

I represented as chief counsel a Mississippi lawyer who was a defendant in this criminal stock fraud prosecution. The jury returned guilty verdicts against all defendants following a trial that lasted approximately three weeks in December 1976 and January 1977. I tried the case and argued the appeal.

The case was a major stock fraud prosecution at the time, and posed problems for the defense in that certain defendants had a defense strategy that put them in conflict with other defendants, notwithstanding efforts to minimize such conflicts.

Trial court:
U.S. District Court
Southern District of New York

Trial judge:
The Hon. Marvin E. Frankel

Opposing counsel:
W. Cullen MacDonald
Hawkins, Delafield & Wood
67 Wall Street
New York, NY 10005
(212) 820-9333

Counsel for codefendants:
Albert J. Gaynor
34 S. Broadway
White Plains, NY 10601
(914) 761-2399

Sidney Feldshuh
(current address unknown)

Douglas F. Eaton
600 Madison Avenue
Suite 502
New York, NY 10022
(212) 759-1919

5. SafeCard Services, Inc. v. Dow Jones & Co., Inc, et al., 537 F. Supp. 1137* (E.D. Va. 1982), aff'd, 705 F. 2d 445 (4th Cir.), cert. denied, 464 U.S. 831 (1983).

The plaintiff in this action claimed that Dow Jones and other defendants had conspired to lower the price of its stock and to promote the fortunes of its chief competitor through, inter alia, a series of articles in Barron's, all in violation of federal securities and antitrust laws. The case was essentially a libel claim brought as securities and antitrust claims. I was chief counsel for Dow Jones and its editors. Summary judgment was granted

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* Although the list of counsel in the reported opinion shows only Dow Jones' local counsel, I argued this case and wrote the brief.

in favor of the Dow Jones defendants on the eve of trial.

The case was significant in that plaintiff sought to avoid the burden of proof in a libel case by pursuing securities fraud and antitrust theories.

Trial court:
U.S. District Court
Eastern District of Virginia

Trial judge:
The Hon. Richard L. Williams
U.S. District Court for the
Eastern District of Virginia
200 South Washington Street
Alexandria, VA 22314

Opposing counsel:
Hugo L. Black, Jr.
Kelly, Black, Black, Earle & Patchen
1400 Alfred I. DuPont Building
169 East Flagler Street
Miami, FL 33131
(305) 358-5700

Counsel for codefendants:
David Fiske
Thomas & Fiske
510 King Street
Suite 200
P.O. Box 820
Alexandria, VA 22313
(703) 836-8400

6. Triad Financial Establishment v. The Tumpane Company, 611 F. Supp. 157 (N.D.N.Y. 1985)

The plaintiff in this action, an entity owned by Saudi arms merchant Adnan Khashoggi, sued for a commission based on alleged services rendered to assist the defendant in procuring a contract to supply arms-related services to the Saudi government. I was chief counsel to the defendant, took and supervised discovery, and argued the motion that resulted in partial summary judgment for the defendant. The case was settled shortly afterward.

The case was significant in that it involved some intricate choice-of-law issues and turned on an interpretation of a Saudi royal decree barring commission payments of the type sought by plaintiff.

Trial court:
U.S. District Court
Northern District of New York

Trial judge:
The Hon. Neal P. McCurn
100 South Clinton
Syracuse, NY 13260

Opposing counsel:
James D. St. Clair

Thomas M. O'Connor
Hale & Dorr
61 State Street
Boston, MA 02109
(617) 742-9100

7. Gaeta v. New York News Inc., et al., 115 Misc. 2d 403 (N.Y. County 1982), aff'd, 95 A.D.2d 315 (First Dep't 1983), rev'd, 62 N.Y.2d 340 (1984)

This libel case arose from a Daily News article reporting the case history of a released mental patient. The article reported -- falsely -- that the patient had become insane after his son's suicide which was precipitated, in turn, by the extra-marital affairs of the patient's wife, who was the plaintiff. The Court of Appeals entered summary judgment for my clients, the Daily News and its reporter and editor, reversing the decisions below.

The case clarified the applicability of standards governing summary judgment in libel cases arising from articles on matters of public concern.

Appellate court:
Court of Appeals, State of New York

Appellate judges:
The full court; opinion by Judge Kaye.

Opposing counsel:
Frank C. McDermott
26 Court Street
Brooklyn, NY 11242
(718) 858-3395

8. Shapiro v. Ferrandina, 352 F. Supp. 641 (S.D.N.Y.), aff'd, 355 F. Supp. 563 (S.D.N.Y.), modified, 78 F.2d 894 (2d Cir. 1973)

I represented the government of the United States, acting in behalf of the government of Israel in this extradition case. The case was tried initially before Judge Milton Pollack, sitting as a committing magistrate. It was then appealed by habeas corpus to Judge Gurfein, and his denial of the writ was appealed to the Court of Appeals.

The case refined several principles of international extradition, including the principle of specialty that permits extradition by the asylum state to the demanding state solely for trial on specified offenses.

Trial and Appellate (habeas corpus) court:
U.S. District Court
Southern District of New York

Trial judge:
Milton Pollack

Habeas corpus judge:
Murray I. Gurfein (deceased)

Appellate court:
U.S. Court of Appeals for the Second Circuit

Appellate judges:
Henry J. Friendly (deceased)
James Oakes
Oscar Davis (of the U.S. Court of Claims, by designation)

Opposing counsel:
Nathan Lewin
Miller, Cassidy, Larroca & Lewin
2555 M Street N.W.
Washington, D.C. 20037
(202) 293-6400

9. United States v. Carlin Communications, et al., Docket Nos. 85-2645, et al. (10th Cir. April 9, 1987)(argued on appeal by Harold R. Tyler, Jr.)

This was a criminal prosecution of Carlin Communications, which operates a so-called "dial-a-porn" service in New York, for alleged interstate transportation of obscene materials. I represented the defendants Carlin Communications, Inc. and two of its executives.

I directed the strategy and legal research, drafted major portions of the papers, and gave the principal argument in support of the motion to dismiss the indictment for failure to charge a federal crime. In essence, the government had charged violation of three statutes that did not apply to the defendants' conduct; they had not violated the one statute that did apply to their conduct.

The significance of the case lies in the principles of statutory construction it involved, notably the rule of lenity.

Trial court:
United States District Court, District of Utah

Trial judge:
The Hon. Bruce S. Jenkins, Chief Judge
U.S. Courthouse & Post Office, Rm. 246
350 South Main
Salt Lake City, Utah 84110

Appellate court:
U.S. Court of Appeals for the Tenth Circuit

Appellate judges:
Bobby R. Baldock, Monroe McKay,
Wesley E. Brown (of the District of Kansas, by designation)

Opposing counsel:
Richard N. Lambert, Assistant U.S. Attorney
470 A. U.S.P.O. and Courthouse
350 South Main Street
Salt Lake City, Utah 84110
(801) 524-5682

Counsel for codefendants:
Frank H. Wohl
Lankler, Siffert & Wohl
1120 Avenue of the Americas
New York, NY 10036
(212) 921-8399

John H. Weston
Brown, Weston & Sarno
433 North Camden Drive
(Suite 900)
Beverly Hills, CA 90210
(213) 550-7460

Local counsel:
Stephen R. McCaughey
Christine F. Soltis
Hatch & McCaughey
72 East 4th South
Suite 330
Salt Lake City, UT 84111
(801) 364-6474

10. Matter of Roy M. Cohn, 118 A.D.2d 15, 503 N.Y.S.2d 759 (First Dep't 1986)

This was an attorney disciplinary proceeding in which I was co-lead counsel for the respondent, along with my partner Harold R. Tyler, Jr. We both presented evidence by examination and cross-examination of witnesses, and argued to the panel. I was the principal author of the briefs.

The case was tried intermittently over approximately nine months, from April through December 1984, with post-hearing submissions thereafter and a subsequent appeal to the Appellate Division, First Department. Three of the four charges were sustained by the hearing panel. On cross-appeals, the Appellate Division affirmed the findings sustaining three charges, and reversed the finding that failed to sustain the fourth. The respondent was disbarred.

The case was protracted and complex, and notable for the kinds of problems that accompany representation of a highly visible and vocal client, including public disclosure of the proceeding before it reached the Appellate Division.

Trial Tribunal:
Departmental Disciplinary Committee,
First Judicial Department

Panel:
John L. Amabile, Andrew J. Connick,
Donald Diamond, Charles J. Hynes,
Eliot A. Lumbard, Dean George W. Shea,
Irwin Zlowe (deceased)

Appellate court:
Appellate Division, First Department

Appellate judges:
Leonard H. Sandler, Arnold L. Fein,
J. Robert Lynch, Ernst H. Rosenberger,

Betty Weinberg Ellerin

Opposing counsel:
Michael A. Gentile, Sarah Diane McShea,
Howard Benjamin
Departmental Disciplinary Committee
41 Madison Avenue
New York, New York 10010
(212) 685-1000

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

From 1976 to the present, after leaving the U.S. Attorney's Office, I have represented several clients in connection with criminal or disciplinary investigations that ended without the initiation of litigation or the bringing of charges. Such representation has consisted of ongoing contact with prosecutors or disciplinary authorities, and at times the submission of detailed factual memoranda outlining why charges or litigation are inappropriate.

In addition, in 1986 and 1987 I participated with my partner Harold R. Tyler, Jr. and two lawyers from another firm in preparing a report for the Metropolitan Transportation Authority dealing with the 1983 arrest and subsequent death of a young black man. Allegations of racially motivated brutality had been made against the Transit Authority police involved, although a criminal trial of six of the officers had ended in acquittal on all charges. We interviewed all Transit Authority police patrol personnel and superior officers involved, conducted other investigation, and submitted to the Transit Authority a 50-page report, later made public. I participated in all aspects of the investigation and preparation of the report, including witness depositions, legal research, and writing of the report.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

a) Patterson, Belknap, Webb & Tyler
30 Rockefeller Plaza
New York, New York 10112

Profit-Sharing Plan for Partners and Staff Members of Patterson, Belknap, Webb & Tyler, invested with Travelers Insurance Company. My account balance is approximately $115,000, less a loan of about $14,000 that must be repaid within 30 days of my withdrawal from the firm.

Pursuant to the existing partnership agreement, dated as of February 1, 1986, and a special agreement between me and the firm, dated January 13, 1986, I am to receive approximately $223,000 plus my capital account, plus my share of partnership profits to the date of termination of my employment following Senate confirmation, to be paid over a two-year period.

b) The Oxford Financial Group
880 Third Avenue
New York, New York 10022

The Oxford Financial Group is a merchant banking and securities arbitrage partnership in which limited partners share pro rata in the profits after deducting management fees to the general partner.

I have a limited partnership interest with a current value, on an equity basis, of approximately $20,000, the amount I invested in the fall of 1986.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I would be guided by 28 U.S.C. § 455 and relevant decisional law.

I believe the only such potential conflicts would be presented by the appearance of former clients as parties, or my firm as counsel to a party. I would recuse myself in such cases.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Yes. I am the executor of two estates now in administration, and am listed as the executor under the will of another client and friend. I would propose to discharge these responsibilities if doing so does not violate any law or regulation, or otherwise conflict with the responsibilities of the office to which I seek appointment. If such conflict does arise, I would relinquish these executorships.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached report.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

Net worth statement attached.

6. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1987 I was treasurer of the campaign of Eliot G. Sagor who ran unsuccessfully as a Republican for Justice of the New York Supreme Court. I was responsible for disbursing campaign funds and reporting to state authorities with respect to contributions and disbursements.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged?

Beyond my tenure as an Assistant U.S. Attorney for the Southern District of New York, where I tried to see that the law was uniformly and intelligently enforced, I have been active in private practice in providing pro bono representation. I have participated myself and have supervised others in representing Federal and state prisoners at the trial and appellate level, and in protecting the rights of such pro bono litigants as a discharged serviceman and a Social Security claimant. When an apparently deserving and indigent mental patient declined the services of publicly paid counsel and requested instead that private counsel represent him, I volunteered my own services and those of my firm to try to secure his placement in a less restricted facility and to protect his meager assets from seizure by the state.

In addition, I have worked with associates at my firm to help relieve the burden on the New York City Corporation Counsel's Office in civil cases and the New York County District Attorney's Office in criminal cases by supervising those associates in pro bono civil trials and criminal appeals in behalf of those public offices.

Finally, I have worked to help formulate policies of the B'nai B'rith Anti-Defamation League, through its National Legal Affairs Committee. Although I have not always agreed with every position that organization has adopted, I believe it is firmly committed to helping achieve equal justice for all citizens under the law.

Because of the manner in which my time records are kept, it is impossible for me to provide a detailed breakdown as to each matter. However, I would estimate that, for example, the representation of the indigent mental patient referred to above has taken about a week over a period of about two years, and that the supervision of

the trials and appeals referred to above has taken another week over the same period.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

   I did belong to such a club, the University Club, from 1971 to January, 1987. That club excluded women, although it no longer does so. During the period of my membership I sought to co-sponsor a woman for membership so as to test the exclusionary policy, and supported efforts to change it. When my efforts and those of others were unavailing, I resigned from the club in January 1987, and urged others to do so. (A copy of my letter of resignation, dated January 20, 1987, is attached). Thereafter, the club changed its policies and now admits women. I have not rejoined the club.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

   There is such a committee, and it did recommend my nomination. I was interviewed initially by that committee, comprised of lawyers including a former United States Attorney for this District, and was asked about my background and experience, as well as whether there were any incidents or facts in my background that could embarrass either Senator D'Amato, who proposed my nomination, or President Reagan. I believed there were none and so stated. Thereafter, I was interviewed by the Assistant Attorney General in charge of the Justice Department's Office of Legal Policy, and by members of his staff. I was interviewed also by a representative of the American Bar Association and by agents of the Federal Bureau of Investigation. At each stage described above I submitted forms disclosing my background and experience.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

   No.

5. Please discuss your views on the following criticism involving "judicial activism."

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic

criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I would think it a truism that under our Constitution, it is the function of Federal judges to decide only "cases and controversies," and to do so only by applying laws as legislators meant them to be read and, when necessary, the provisions of the Constitution itself, which are neither abstract nor obscure. I believe it is not the function of Federal judges to pass on the wisdom of existing laws, or to use cases as the occasion for enacting rules they believe socially desirable.

To the extent that courts perform more than that function, they not only usurp the role of elected officials, but also weaken the political will of the people. The constitutionally mandated life tenure of Federal judges is entirely logical as a way of protecting the integrity of decisions that resolve essentially private controversies; it is unexplainable if Federal judges are to act as legislators or executives to decide disputes on issues of public policy.

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

MICHAEL B. MEKOSEY

ASSETS		LIABILITIES	
Cash on hand and in banks	1,000.00	Notes payable to banks - secured	-
U.S. Government securities	-	Notes payable to banks - unsecured* [5]	1,200.00 (approx.
Listed securities* [1]	1,500.00	Notes payable to relatives	3,000.00
Unlisted securities	-	Notes payable to others	-
Accounts and notes receivable:	-	Accounts and bills due	-
Real estate owned* [2]	100,000.00	Unpaid income tax	-
Real estate mortgages receivable	-	Other unpaid tax and interest	-
Autos and other personal property	25,000.00	Real estate mortgages payable* [6]	34,000.00
Cash value - life insurance	-	Chattel mortgages and other liens payable	-
Other assets - itemize		Other debts - itemize:	
Law partnership capital* [3]	90,290.00	Chemical Bank (revolving credit)	15,000.00 (approx.
Limited partnership capital* [4]	20,000.00	Manufacturers Hanover (overdraft and MasterCard)	5,000.00 (approx.
Profit Sharing Plan	115,000.00 (approx.)	Contingent liabilities	32,000.00
Individual Retirement Accounts (self and spouse)	20,000.00 (approx.)	Total liabilities (including contingent)	90,000.00
Total Assets	371,790.00	Net Worth	281,790.00
		Total liabilities and net worth	371,790.00

* = see schedule

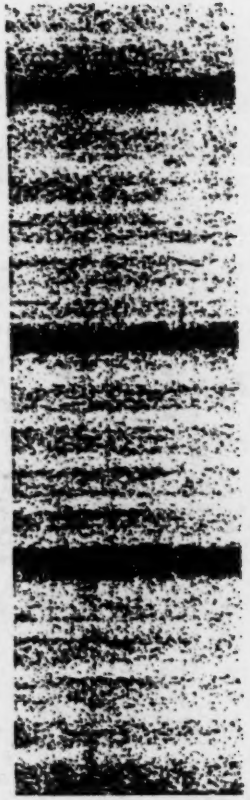
CONTINGENT LIABILITIES

As endorser, comaker or guarantor	-
On leases or contracts	-
Legal Claims	-
Provision for Federal Income Tax*[7]	18,000.00
Other special debt*[8]	14,000.00

* = see schedule

GENERAL INFORMATION

Are any assets pledged? (Add schedule.)	No
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No



CLIENTS OF PATTERSON, BELKNAP, WEBB & TYLER

1. Mostazafan Foundation, New York, N.Y. -- Defense of real estate brokerage suit.

2. Dow Jones & Co., Inc., New York, N.Y. -- Litigation representation and advice.

3. New York News Inc., New York, N.Y. -- Litigation representation and advice.

4. WPIX Inc., New York, N.Y. -- Litigation representation and advice.

5. Roy M. Cohn, New York, N.Y. -- Defense of attorney disciplinary proceeding.

6. Provincetown-Boston Airline Inc., Tampa, Fla. -- Defense of stock fraud claim.

7. Eliot Weisman, Coral Springs, Fla. -- General personal advice.

8. Vermont Department of Public Service, Montepelier, Vt. -- Litigation regarding New York hydropower.

9. The Tumpane Company, Portland, Oregon -- Defense of agent's fee claim.

10. Demov, Morris, Levin & Hammerling, New York, N.Y. -- Advice is connection with fee dispute.

11. Winthrop Munyan, New York, N.Y. -- Partnership lawsuit.

12. Bronson, Bronson, McKinnon, San Francisco, CA -- Advice in connection with appeal.

13. FBI Agents' Association, New York, N.Y. -- General representation and advice.

14. Levin & Weissman, New York, N.Y. -- Representation of law firm in civil action, and advice.

15. The Tribune Company, Chicago, Ill. -- Litigation representation and advice.

16. Chemical Bank, New York, N.Y. -- Litigation representation and advice.

17. Carlin Communications, New York, N.Y. -- Advice and representation in Federal criminal action.

18. Claus von Bulow, New York, N.Y. -- Advice and representation in civil litigation.

19. Lorin and Morris Silverman, New York, N.Y. -- Advice and representation in civil litigation.

20. Rose Falkenstein, New York, N.Y. -- Will and estate administration.

21. E.F. Hutton & Co., New York, N.Y. -- Advice and representation of outside directors in shareholder derivative actions.

22. VER-AL Holdings, Inc., Queens, N.Y. -- Advice in real estate litigation.

23. Metropolitan Transportation Authority, New York, N.Y. -- Investigation as special counsel regarding death of prisoner while in custody of MTA police.

24. First Jersey Securities, New York, N.Y. -- Advice in connection with subpoenas and litigated matters.

25. Mary Carmen Crain, New York, N.Y. -- Advice in connection with family business dispute

26. Stromberg-Carlson Corp., Lake Mary, Fla. -- Litigation representation and advice.

27. Plessey Corp., England -- Litigation representation and advice.

28. Sullivan Highway Products Inc., Monticello, N.Y. -- Representation in antitrust action.

29. TransAmerican Capital Corp., Dallas, TX -- Litigation advice and representation.

30. Summit Savings Ass'n, Dallas, TX -- Litigation advice and representation.

31. Local 211, Capmakers Union, New York, N.Y. -- Advice and representation in connection with subpoena.

32. Oxford Associates, L.P., New York, N.Y. -- Litigation advice and representation.

33. 880 Associates, L.P., Barry N. Wish, Ira Leventhal, William Erbey, Kevin Heneghan, Ravi Banerjee, New York, N.Y. -- Litigation advice and representation.

34. Ex-Cell-O Corp., Textron, Inc., Detroit, Michigan, Providence, Rhode Island -- Litigation advice and representation.

Reporting Individual's Name

Michael B. Mukasey

Page Number	5	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Example: Nat'l Assn. of Real Estate, NY, NY Doe Jones & Smith, Hometown, USA	Non-profit education Law firm	President Partner	0499 1998	0499 11499
B'nai B'rith, New York, N.Y.	Non-profit education	Member National Legal Affairs Committee	10/84	Present

Part II
Compensation in Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliates for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any non-profit organization, where you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

Source (Name and Address)	Brief Description of Duties
Example: Doe Jones & Smith, Hometown, USA Home University, Alma of Doe Jones & Smith Hometown, USA	Legal services Legal services in connection with university commencement
Patterson, Belknap, Webb & Tyler, New York, NY	(Legal Services)
(See attached list of clients of Patterson, Belknap,	Webb & Tyler for whom I have performed services.)

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Reporting Individual's Name

Michael B. Mukasey

Page Number 3 | Schedule B

Part I
Transactions

Investments and Trust/Income Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☐

ID No.	Owner	Identification of Assets: RYZ Common	Type of Transaction (X): Purchase	Sale	Exchange	Date (Mo., Day, Yr.): 8/1/05	Amount of Transaction ($): $1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	Over $500,000
1			X			8/1/05			X			
2												
3												
4												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Investments and Trust/Income Filers only:
Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $260 or more unless received as personal hospitality of the donor's personal or family residence; (2) other gifts received from one source totaling $140 or more in value; and (3) cash reimbursements of $260 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (3), exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☐

ID No.	Owner	Source (Name and Address)	Brief Description	Value
1	Spouse	Hunt Assn. of Rock Coliseum, NY, NY	Airline ticket, hotel room & meals received on personal conference 8/15/05	$600
	Spouse	Hunt Assn. of Rock Coliseum, NY, NY	Lunches breakfast for evening promotion	$120
2				
3				
4				
5				
6				

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Financial Disclosure Report

☐ Nominee	☐ New Entrant, Nominee, or Candidate ☐ Termination Filer	Agency Use Only	OGE Use Only
Reporting Individual's Name	Last Name: Mukasey	First Name and Middle Initial: Michael B.	
Position for Which Filing	Title of Position: U.S. District Judge Southern District of New York	Department or Agency (If Applicable)	
Location of Present Office	Address (Number, Street, City, State and ZIP Code): Room 3540 30 Rockefeller Plaza, New York, NY 10112	Telephone No. (Include Area Code): (212) 698-2500	
Positions Held With the Federal Government During the Preceding 12 Months (If Other Than as Above)	Title of Position(s) and Branch/Unit: None		
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Senate Judiciary Committee	Do You Intend to Create a Qualified Blind Trust? ☐ Yes ☑ No	

Certification	Signature of Reporting Individual	Date (Month, Day, Year): 1-9-87
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Official (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)	Termination Date (If Applicable) (Month, Day, Year)
July 27, 1987	

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- Schedule A—The reporting period for income (BLOCK C) and Transactions Text (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- Schedule C, Part I (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- Schedule C, Part II (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- Schedule D—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

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Reporting Individual's Name: Michael B. Mukasey

Assets and Income

Page Number: 2

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held by the filer's spouse or dependent child as of the close of the reporting period (whether or not it was owned during the entire period) and (b) any other asset or source of income (which "produced" more than $200 in income during the reporting period). This includes any (1) stock, bond, or other security, such as a money market fund, mutual fund, or bank account; (2) real property, rental property, or business; (3) partnership, joint venture, or other investment; (4) trust; (5) IRA, Keogh, or other retirement account; (6) personal trust; (7) deferred income plan; (8) any compensation for services, such as salary, fees, commissions, honoraria, or royalties; (9) any other asset or source of income. You may also report sources of income earned by your spouse which you wish to have considered in connection with your report. See instructions for rules on trusts, retirement and savings plans, and mutual fund holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $200 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "exempted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Investment and Trust/Rental Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange (or have during the reporting period) for a value that exceeds $1000?

BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets	BLOCK C Income																								BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse's and your dependent child (DC). NONE ☐	Category of Value (X): None (or less than $1001) / $1,001-$15,000 / $15,001-$50,000 / $50,001-$100,000 / $100,001-$250,000 / $250,001-$500,000 / $500,001-$1,000,000 / Over $1,000,000	Type of Income (X): Dividends / Rent / Interest / Capital Gains / Capital Gains Taken Directly to Trust / Qualified Trust	Other (Specify Type)	Category of Amount of Income (X): None (or less than $201) / $201-$1,000 / $1,001-$2,500 / $2,501-$5,000 / $5,001-$15,000 / $15,001-$50,000 / $50,001-$100,000 / $100,001-$1,000,000 / Over $1,000,000	Annual Amount Only if "Other" Specified	Spouse/DC, if Any, Only if Honoraria	If any questions listed in Part I for those assets reportable which were held for a year,	
																										YES	NO
SP (JT) Bank One — NYI Common, Ben Jones & Sons, Hometown, USA			X	X					X										X					$50,000			X
C Oxford Financial Group				X										Limited Partner.	X												
D Colonial Equities		X							X							X											
E Patterson, Belknap, Webb & Tyler							X							Law Partner.										$300,000			
A Ramar School																											
B New York City (Teacher)																											
C Tutor (self-employed)																											
D																											
E																											
A																											
B																											
SP																											

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Reporting Individual's Name

Michael B. Mukasey

Page Number 4 | Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value ($)				
						$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $1,000,000	Over $1,000,000
A (JT)	Riggs Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1991	13%	30 yrs.			X		
	John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1	Chemical Bank, 30 Rockefeller Plaza, New York, NY 10112	Privilege Checking (revolving overdraft)	1986	20%	revol-ving		X			
2										
3										
4										
5										
6										

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leave of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☐

Status and Terms of any Agreement or Arrangement	Parties (Name of person & former employer, if applicable)	Date (Month, Yr.)
Example: Pursuant to partnership agreement, will receive capital account & partnership share calculated on services performed through 11/85	Ellen Jones & Smith, Home town, USA	7/70 (partnership agreement)
Pursuant to partnership agreement and special agreement with the firm,	Patterson, Belknap, Webb & Tyler New York, N.Y.	2/86 Partner. Agreement
will receive $223,000 plus capital account plus partnership share through		and 1/86 special agree.
termination date following confirmation, paid over a two-year period.		

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SCHEDULE TO CONFIDENTIAL FINANCIAL STATEMENT --
NET WORTH OF MICHAEL B. MUKASEY

1. Listed securities -- Colonial Equities (mutual fund)

2. Real Estate -- vacation home at 19 Oyster Shores Road, East Hampton, New York 11937

3. Law partnership capital --
Patterson, Belknap, Webb & Tyler
30 Rockefeller Plaza
New York, New York 10112

4. Limited partnership capital --
The Oxford Financial Group
880 Third Avenue
New York, New York 10022

5. Notes payable to banks - unsecured -- Balance of partnership loan.

6. Real estate mortgages payable -- Mortgage on vacation home - Sag Harbor Savings Bank, Sag Harbor, New York

7. This amount represents underpayment of first two quarterly payments of Federal Income Tax for 1987, to be made up at close of firm's fiscal year.

8. This amount represents the outstanding balance of a loan against the "Profit sharing plan" asset listed above. It must be repaid in full within 30 days of withdrawal from the firm.

ROOM 3800
30 ROCKEFELLER PLAZA
NEW YORK, N. Y.
10112

212 841-4000

January 20, 1987

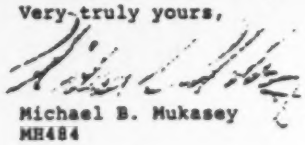
Secretary
The University Club
One West 54th Street
New York, NY 10019

Dear Sir:

Since the initial proposal some years ago that the Club admit women, and the subsequent rejection of that proposal at an open meeting packed by the so-called Committee of 100, I have remained a member of the Club in the belief that sooner or later common sense and common decency would prevail.

It is now later rather than sooner, and the recent vote shows that sense and decency are not as common as I had thought. Accordingly, I hereby resign my membership in the Club, effective immediately. I do so with two conflicting regrets -- one that things did not turn out differently, the other that I did not resign sooner.

Very truly yours,



Michael B. Mukasey
MH484

CHAIRMAN
and Member-at-Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Carey W. Lattimore
One Shell Square
50th Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
One IBM Plaza
Suite 4300
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewett
P.O. Box 80268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andersen
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Winter Bldg.
2 Dexter Avenue
P.O. Box 78
Montgomery, AL 36104

DISTRICT OF COLUMBIA
CIRCUIT & FEDERAL
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 Eye Street, N.W.
Washington, DC 20006

BOARD OF GOVERNORS
LIAISON
Sharp Whitmore
2805 Coral Road
Fallbrook, CA 92028

STAFF DIRECTOR
Wentland L. Sandel, Jr.
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5685

STAFF ASSISTANT
Diana Livingston
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5701

AMERICAN BAR ASSOCIATION **Standing Committee on Federal Judiciary**
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

July 28, 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: MICHAEL B. MUKASEY
United States District Court
Southern District of New York

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Michael B. Mukasey for appointment as Judge of the United States District Court for the Southern District of New York.

Our Committee is unanimously of the opinion that Mr. Mukasey is "Well Qualified" for this appointment.

Sincerely,

Robert B. Fiske, Jr.

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).
George Curtis Smith

2. Address: List current place of residence and office address(es).
Office: Franklin County Hall of Justice
369 S. High Street, Columbus, Ohio 43215

Home: 4326 Lyon Drive, Columbus, Ohio 43220

3. Date and place of birth.
August 8, 1935, Columbus, Ohio

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).
Barbara J. Smith, part-time employee, Woodhouse-Lynch, 150 E. Broad St., Columbus, Ohio 43215 (Tom Lynch, Employer - 228-7200) (Maiden name Wood)

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
The Ohio State University 9/1953 - 6/1959; College of Arts and Sciences, 6/1957; Bachelor of Arts, College of Law, Juris Doctor 6/1959.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
1959-62, City of Columbus, Ohio, Assistant City Attorney;
1962-64, City of Columbus, Ohio, Executive Assistant to the Mayor of Columbus;
1964-65, State of Ohio, Office of the Attorney General, Assistant Attorney General;
1965-70, Franklin County, Ohio, Office of the Prosecuting Attorney, Chief Counsel;
1971-80, Franklin County, Ohio, Prosecuting Attorney of Franklin County;
1980-85, Franklin County Municipal Court, Judge;
1985-Present, Franklin County Common Pleas Court, Judge;

1971-80, Ohio Prosecuting Attorneys Association, Non-profit professional association, Trustee, Treasurer, Secretary, Vice President and President;

1980-85, Ohio Municipal/County Judges Association, Trustee, Treasurer, Secretary, 2nd Vice President;
1985-Present, Ohio Common Pleas Judges Association, non-profit professional association, Committee Chairman;
1975-80, The Athletic Club of Columbus, a non-profit athletic/social organization, Director, Treasurer, Secretary, Vice President and President;
1972-83, Greensview Elementary School, Parent-Teachers Organization, President;
1967-Present, Tri-Village Shrine Club, Fraternal/Charitable organization, Trustee, Secretary, Vice President and President;
1985-Present, Community Corrections Planning Board, a governmental agency, Treasurer;
1967-Present, Lawyers Club of Columbus, non-profit social/professional organization, Secretary, Vice President and President;
1971-80, National District Attorneys Association, non-profit professional association, National Committee Chairman;
1974-Present, Crime Solvers Anonymous, non-profit service organization, Trustee;
1985-86, Central Ohio Lung Association, non-profit charitable organization, Trustee;
1982-84, Project Hope, non-profit charitable organization, Men's Board;
1967-87, Leukemia Society of Central Ohio, non-profit charitable organization, Trustee;
1981-Present, Teen Challenge for Girls, Inc., non-profit charitable organization, Trustee.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.
None. Nominee had leg amputated at age 14.

8. Honors and Awards: List any scholarships, fellowships, honorary society memberships that you believe would be of interest to the Committee.
National Honor Society - North High School Chapter, 1953;
Senior Class President - North High School, 1953;
Chief Justice - North High School Student Court;
Chief Justice - The Ohio State University Student Court, 1956-1957;
President - Freshman Fraternity Council, O.S.U., 1953-1954;
Outstanding Freshman Fraternity Pledge at O.S.U., 1954 (presented by Council of Fraternity Presidents);
Phi Eta Sigma Honorary Scholastic Fraternity, O.S.U., 1954;

Romophos Honorary Society President, 1954, sophomore scholastic/student activities O.S.U.;
Bucket and Dipper Honorary Society, 1955, junior scholastic/student activities O.S.U.;
Sphinx Honorary Society, 12 O.S.U. seniors, scholastic/student activities;
College of Law, Moot Court Senior Advisor for first national finalist team from O.S.U., 1959;
Columbus 10 Outstanding Young Men of 1971, Columbus Junior Chamber of Commerce;
Prosecuting Attorneys Association, Chairman of the Legislative Committee which actively engaged in drafting, commenting on and lobbying for and against bills in the Ohio General Assembly. President, 1979-80; named Ohio's Outstanding Prosecuting Attorney in 1975; Award of Honor, Leadership Award and Honorary Lifetime Member 1976-80. Frequent lecturer, Ohio Prosecuting Attorneys Association Law Workshops;
National District Attorneys Association, Ohio Representative, Board of Directors, 1980, National Chairman, Career Criminal Program (expedited prosecution of the violent, recidivist defendants); National Chairman, Economic Crime Project (focusing on the prosecution of the white collar criminal); During the nine years of active membership I presided over and/or participated in numerous workshops and seminars on the above subject and other anti-crime programs such as Screening and Diversion for first time non-violent offenders, and Victim-Witness Assistance Programs. This involved working closely with the Justice Department and the Law Enforcement Assistance Administration;
Fraternal Order of Eagles Award as Prosecutor, Judge and Founder of Franklin County Crime Alert Program, 1980;
Resolution of Honor, Columbus Building Trades Council, AFL-CIO, as Prosecutor and Judge, 1981;
Commencement Address - Columbus Technical Institute (Columbus State Community College), 1984;
Honorary Lifetime Membership, Ohio Prosecuting Attorneys Association, 1981.

9. Bar Association: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.
American Bar Association;

Ohio State Bar Association, Committee on Law

Related Education 1984 to Present, judge final rounds, Mock Trial Program;

Columbus Bar Foundation, charter member;

Columbus Bar Association, Chairman, Law Day observance 1984 and 1967;

O.S.U. Student Bar Association,
Vice President and Law Day Chairman, 1957

Ohio Prosecuting Attorneys Association, President, 1979; 1st Vice President, 1978; 2nd Vice President, 1977, Secretary, 1976, Treasurer, 1975, Trustee, 1971-1980; Chairman, Committee on Legislation 1978.

National District Attorneys Association, N.D.A.A. Board of Directors, 1980; National Chairman, Economic Crime Committee, 1976; National Chairman, Career Criminal Committee, 1977; Victim-Witness Committee, 1974.

Ohio Municipal/County Judges Association, 2nd Vice President, 1984; Secretary, 1983; Treasurer, 1982; Trustee, 1981-84; New Legislation Committee Chairman, 1983.

Common Pleas Judges Association, Chairman, Long Range Planning Committee, Active Member Legislative Committee, 1985 to present.

Conference for a Safe Ohio, Chairman and organizer 1977 in connection with the N.D.A.A. Career Criminal (recidivist) Program.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong (such as civic, educational "public interest" law, etc.).

The Ohio Common Pleas Judges Association actively lobbys before the Ohio General Assembly.
Leukemia Society - Charitable
Teen Challenge, Inc. - Charitable
Crime Solvers Anonymous - Non-profit service organization
O.S.U. Alumni Organization

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Ohio, October, 1959;
U.S. District Court, Southern District of Ohio, February 20, 1969;
Supreme Court of the United States of America, June 14, 1971.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written. Please supply a copy of any significant speech by you on Constitutional law or national policy. If there were press reports about the speech, and they are readily available to you, please supply them.

See attached

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. May 18, 1987.

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Common Pleas Court of Franklin County from February 9, 1985 to present. This court handles major criminal and civil cases, and has county-wide jurisdiction in the county where the state capital and all state agencies are headquartered. The population of the county is approximately 900,000, serving a metropolitan area of over a million. There is no limit on civil jurisdiction. Primarily felony cases are heard, although some misdemeanors can be heard. I am a judge in the general division along with 13 other judges. There is a probate, a juvenile and domestic division handling those specific subjects.

Prior to this I served on the Franklin County Municipal Court from April, 1980 to February, 1985. This is a county-wide trial court with jurisdiction over civil and criminal cases. This court services a metropolitan area of more than a million population and carries an active caseload of some 300,000 cases. Each judge is challenged by the case management aspect of the position. I consistently ranked in the upper part of the 13 judges with cases tried and disposed of. This led to receipt of a "Superior Judicial Service Award" from the Chief Justice of The Ohio Supreme Court for each year that I served on this court (1980, 1981, 1982, 1983 and 1984). The maximum jurisdiction on civil cases was $10,000, I presided over many cases, sometimes as many as five trials to the court per week and many others with a jury. Most of the jury cases involved such subjects as evictions, criminal assaults, vehiclular homicide, drunk driving and other serious misdemeanor matters carrying up to one year in prison.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

See attached

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1959-1962 - Assistant City Attorney, Columbus, Ohio (appointed);

1962-1964 - Executive Assistant to the Mayor of the City of Columbus (appointed);

1964-1965 - Assistant Attorney General, State of Ohio (appointed);

1965-1970 - Chief Counsel to the Prosecuting Attorney of Franklin County (appointed);

1971-1980 - Prosecuting Attorney of Franklin County (elected);

1974 and 1978 - Candidate for Ohio Attorney General defeated in November election;

17a. Legal Career: Describe chronologically your law practice and experience after graduation from law school including: 1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk; 2. whether you practiced alone, and if so the addresses and dates; 3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each. 17b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years? 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

July, 1959 I was a law clerk/intern in the office of the City Attorney of Columbus, Ohio until October, 1959 when I was appointed to the position of Assistant City Attorney by Russell Leach, City Attorney, City Hall, Columbus, Ohio 43215. Mr. Leach is a partner in Bricker and Eckler, 100 South

Third Street, Columbus, Ohio 43215 (614-227-2300); During 1960 I had a part-time practice (evenings) with Richard V. Patchen at 40 South Third Street, Columbus, Ohio. This association was concluded at the end of 1960; I continued with the City Attorney's Executive Assistant to the Mayor of the City of Columbus, a cabinet position in city government. The mayor was W. Ralston Westlake, now deceased. The appointment expired at the end of 1963 when the mayor's term of office expired.

In January, 1964, I was appointed an Assistant Attorney General for the State of Ohio by William B. Saxbe, Attorney General of Ohio, Office of the Attorney General, 30 E. Broad Street, Columbus, Ohio 43215. Mr. Saxbe is associated with the law firm of Pierson, Ball and Dowd, Washington, D.C. Mr. Harold B. Talbott, 1832 Suffolk Road, Columbus, Ohio 43221 (614-488-9254) was Chief of the Highway Section and my supervisor. I left this position in January, 1965 to become Chief Counsel to the newly elected Prosecuting Attorney for Franklin County, Ohio.

I served in the office of C. Howard Johnson, Prosecuting Attorney, 369 S. High Street, Columbus, Ohio until December, 1970 when I was appointed interim Prosecuting Attorney for Franklin County. Judge C. Howard Johnson is on the Common Pleas Court of Franklin County, 369 S. High St. (614-462-3661). In January, 1971 I was appointed Prosecuting Attorney to fill the unexpired term. In November, 1972 I was elected to a four year term beginning January, 1973. I served in that office until March, 1980, when I resigned and applied for an appointment to the Franklin County Municipal Court. For a month between these positions, I shared office space with a law firm of Brownfield, Bowen, Bally and Sturtz, headed by Lyman Brownfield, 140 E. Town Street, Columbus, Ohio (614-221-5834).

My practice began as a prosecutor for the City of Columbus in the last quarter of 1959. This involved trying traffic and other misdemeanor criminal cases. This activity included both trials to the court and juries in the Franklin County Municipal Court. My first jury trial took place within ten days of my admission to the Ohio Bar. During 1960 I moved to the civil division and began representing various city officials and departments. I was engaged in researching and preparing formal legal advisory opinions for them. I began to try cases in the Common Pleas Court. The primary subject of my

litigation work was eminent domain on behalf of the Department of Urban Renewal, Division of Streets, the Airport, and the Columbus Board of Education. My assignment to represent the Columbus Schools took most of my time. Another major client was the Airport Board. This activity included my appearance and presentations to the Civil Aeronautics Board in Washington D.C. on several occasions.

After two and one half years of primarily trial work and opinion rendering, I became Executive Assistant to the Mayor of Columbus which was primarily administrative in nature. This involved management and troubleshooting in various parts of city government. A most valuable aspect was lobbying the Administration's ordinances through city council. The legal work involved included drafting or amending legislation and coordinating legal advice to the departments. During my tenure in this office I also served as acting Urban Renewal Director which involved a mixture of legal and administrative duties.

When I was appointed an Assistant Attorney General I was assigned to the Highway Section and more specifically the Interstate 71 Task Force as legal advisor to its Chairman, James W. Shocknessey. It was my duty to render legal advice, research and draft highway related legal opinions, and oversee the land acquisition aspect of bringing I71 into Cleveland. This included working with the trial lawyers in the various counties in the eminent domain area of Ohio law.

17c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

My courtroom experience began with daily appearances as an assistant city prosecutor (1959-1960). When I moved to the civil section of the City Attorney's Office, I was frequently in trial in Common Pleas Court on behalf of the Columbus School Board, Urban Renewal Department and other governmental clients (1960-1962). As an assistant attorney general I was overseeing cases for presentation in courts all over Ohio (1964). When I became chief counsel to the Prosecuting Attorney for Franklin County I frequently represented parties in Common Pleas Court. These included the county schools, library boards, township trustee boards and most county officials (1965-1970). When I became Prosecuting Attorney I continued to present cases to the Franklin County Grand Jury on special investigations and try some murder and major civil matters as well as working closely with the chiefs

of the civil and criminal litigation sections. This involved working with some fifty lawyers and more than fifty support staff personnel (1971-1980).

17c. 2. What percentage of these appearances was in: (a) federal courts, (2) state courts of record and (3) other courts.

(a) Federal court appearances were only occasional as my statutory duties related to the state trial court. Estimate would be 5% in federal courts.

(b) State courts - 90%

(c) Other courts - 5%

17c. 3. What percentage of your litigation was: (a) civil; (b) criminal.

(a) Civil - 75%
(b) Criminal - 25%

17c. 4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

200+. I would estimate that I was sole counsel in 75% of the cases and chief counsel in the balance.

17c. 5. What percentage of these trials was: (a) jury; (b) non-jury.

(a) jury - 70%
(b) non-jury - 30%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case: (a) the date of representation; (b) the name of the court and the name of the judge or judges before whom the case was litigated; and (c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

See attached

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter.

See attached

Attachment for Question 19, Part I

Auto Theft Ring

As Prosecuting Attorney of Franklin County, I started a multi-county, statewide approach to attack the problem of auto theft.

This was and is an ever increasing problem which is a major cause of higher auto insurance premium rates. The "professional" auto theft gang in the Central Ohio area operated statewide and involved salvage yard dealers, titles, vin numbers, theft of cars similar to the wrecked cars to match up with the title for the stolen auto. This involved some 41 persons who were indicted by the Franklin County Grand Jury.

The attached copy of a major Ohio newspaper article explains some of the detail of this special effort.

This innovative multi-county approach to the auto theft problem was organized by me as Prosecutor of the largest county involved. Cooperation was carefully developed between other counties where the theft ring operated. The various county law enforcement agencies likewise followed my lead by closely cooperating with each other and my office. The cases were presented to a special grand jury seated in Franklin County by my staff.

The unique operation resulted in multiple convictions and, according to Columbus police, a one third reduction in Ohio auto thefts. The Ohio Inusrance Institute was most appreciative of this special effort and demonstrated this by holding a dinner and program at which the various participants in the strike force were honored with appropriate comments and commendation awards for the many participants in the probe.

Columbus Dispatch, August 23, 1974

Ten Indicted In Statewide Thefts of Cars

Ten persons were indicted Wednesday in what was described as a statewide auto theft ring that has been operating for possibly the last 10 years.

The indictments returned by a Franklin County Grand Jury contain 60 charges of auto theft, conspiracy, auto conversion, receiving and concealing stolen vehicles, altering vehicle registrations and titles, forgery and larceny by trick.

FRANKLIN COUNTY Prosecutor George C. Smith said the ring allegedly has operated out of two junk car yards in the state and that thefts have occurred in all parts of Ohio.

The prosecutor said the investigation by Columbus police and Franklin County sheriff's deputies indicated wrecked cars were bought from a salvage yard in Crestline.

Identification plates were taken from these cars and put on stolen cars of similar models and makes, Smith said. Titles obtained from the junk yard dealer for the junked cars were used in selling the stolen vehicles, he said.

SMITH SAID in some cases, cars were taken from used car lots.

He said some were taken for test drives and not returned.

Smith said Columbus police have told him Ohio auto thefts have been reduced by about a third since the investigation of the ring began about three months ago.

THOSE INDICTED are: James Martin McCoy, 27, of 180 Ranelle Ct.; Richard F. Guinsler, 26, of 4525 Lynwood Ave.; Margaret Frum, 24, of 180 Ranelle Ct., and Tadeusz Zalewski, whose address was listed as 1208 Neil Ave.

Clarence and Donald Moyer, operators of a salvage yard in Crestline; Oakley Barnett, a junk yard dealer in Willard, Ohio, and three of his sons, Robert and Kenneth of Willard, and Melvin of Willard or Norwalk.

THE INDICTMENTS were returned by the special grand jury that last week indicted 41 persons in connection with burglary-theft operations in Central Ohio.

Smith said persons who purchased stolen vehicles will have to return the cars and may lose money they paid for the automobiles.

Attachment for Question 19, Part I

CRIME ALERT PROGRAM

In 1979, as Prosecuting Attorney of Franklin County, I launched one of the most important and successful crime prevention programs in Ohio history. Starting with just a handful of volunteers, I conducted neighborhood meetings building on the idea of people helping people fight crime. The Franklin County Crime Alert Program was underway.

In less than three years, more than 20,000 volunteers had participated in neighborhood meetings, signed up at grocery stores and shopping centers, and put crime prevention to work in Columbus and Franklin County. Law enforcement agencies from Columbus and every Franklin County suburb had joined together with these citizens forming Ohio's largest and most successful crime prevention project.

Today, neighborhood crime watch programs provide a strong link to law enforcement. Not only is crime less likely to strike a neighborhood where citizens are watching out for each other, but citizens are working more closely with police in a spirit of cooperation. Successful crime prevention today is an outgrowth of the successful crime prevention efforts of the Prosecuting Attorney's office, citizens and other Franklin County law enforcement officials nearly 10 years ago.

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Attachment for Question 19, Part I

THE COUNTY BUDGET COMMISSION
LIBRARY DISTRICT FUNDING

As Prosecuting Attorney I served as a member of and often Chairman of the Franklin County Budget Commission along with the County Treasurer and the County Auditor. Each of the seven library districts in the county vied for the intangible tax revenues to finance their operations.

When a library district board would not receive what it believed to be an adequate share of the funds, it would bring a lawsuit. The cost of each suit would be paid out of their funds. Thus the operating budget for each district and that of their opponents would be decreased substantially by these litigation expenses.

As Chairman of the Commission I organized an auditing effort to study the in depth needs and available resources of each district. Under my direction as Chairman, a leading C.P.A. in the community worked closely with the staff of each library to arrive at a realistic picture of their financial position. A percentage share of the revenue fund was negotiated and agreed to by and between the non-paid citizen trustees of each district. Special arrangements and considerations were made for extraordinary needs.

The result of this effort has been that no litigation has transpired since this effort some 12 years ago. This translates into an estimated savings of tens of thousands of tax dollars for each district.

Attachment for Question 19, Part I

I-71 TASK FORCE

In 1964 I was appointed counsel for the Interstate 71 Task Force by then Ohio Attorney General William B. Saxbe. Chairman James W. Shocknessy of the Ohio Turnpike Commission was appointed chairman of this effort to complete the badly needed I-71 into Cleveland. As counsel I oversaw the purchase and acquisition of land for the final phase of this project. This included troubleshooting the problems which had developed with local leaders in various communities in Cuyahoga County. The overseeing of the legal aspects of this project involved a blend of eminent domain legal activity, appraisals, purchase of sites, and trials, combined with careful negotiation with local government to remove the final obstacles to this vital highway. The obstacles were removed and the highway was completed in a record period of time.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Describe all financial arrangements, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.

   The only future benefit would be from the state retirement systems when I reach the age of 55 or 30 years public service in Ohio, state or local government. This is computed by multiplying years of service times 2.1 percent times the top average salary of three years. Other than life insurance and IRA accounts which my spouse and I each have, there are no other financial arrangements.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

   Should some potential conflict of interest arise I would completely disclose to all interested parties any interest that I would have. I would discontinue the activity or divest myself or my immediate family from any such potential conflict. I would avoid even the appearance of any conflict of interest.

3. Do you have any plans commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain?

   No

4. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   Youth for Eisenhower for President, Ohio Chairman, 1956. This was a promotional effort among college students primarily;

   Westlake for Mayor of Columbus, 1959. This was the managing of the grass roots effort such as signs and door to door promotion of W. Ralston Westlake who was elected Mayor;

   1961, Russell Leach for City Attorney. I was active on a second level of grass roots management. Mr. Leach was re-elected.

   1964 and 1968, C. Howard Johnson for Prosecuting Attorney. I was the campaign manager directing all activities during Mr. Johnson's first campaign and his campaign for re-election.

1966, Chalmers P. Wylie for Congress. I was active as deputy campaign manager to perform and direct grass roots tasks. Mr. Wylie was elected and represents Ohio's 15th District in the House of Representatives.

5. If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?
   Not applicable.

6. Please complete the attached financial net worth statement in detail.
   See attached Statement of Financial Position, (net worth).

DEARFIELD, FRAZIER & CO.
Certified Public Accountants
6172 Busch Boulevard, Suite 2023
Columbus, Ohio 43229
614-436-0300

G. Timothy Dearfield, CPA
James A. Frazier, CPA

Members of:
Ohio Society of
Certified Public Accountants
American Institute of
Certified Public Accountants

July 9, 1987

Dear George and Barbara:

We have compiled the accompanying Statement of Financial Position of George C. and Barbara J. Smith as of June 30, 1987, in accordance with standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of Financial Statements information that is the representation of the individuals whose Statement of Financial Position is presented. We have not audited or reviewed the accompanying Statement of Financial Position and, accordingly, do not express an opinion or any other form of assurance on them.

Respectfully submitted,

Dearfield Frazier & Co.
Dearfield, Frazier & Co.

GEORGE C. & BARBARA J. SMITH
4326 Lyon Drive
Columbus, Ohio 43220
Statement of Financial Position
June 30, 1987

ASSETS

Current Assets - Note 1		
Cash - Checking and Savings	$ 11,059.00	
Cash - Certificate of Deposit - Note 2	35,000.00	
Individual Retirement Accounts - Note 3	14,627.00	
Marketable Securities - Note 4	31,183.00	
Total Current Assets		$91,869.00
Property Assets		
Real Estate:		
4326 Lyon Drive - Note 5	$167,000.00	
1740-1742 Ridgeview Road Note 6	81,967.00	
Personal Property - Home Furnishings & Automobiles	50,000.00	
State Teachers Retirement	687.00	
Public Employees Retirement	61,001.00	
Whole Life Insurance - Cash Value - Note 7	7,173.00	
Total Property Assets		$367,828.00
TOTAL ASSETS		**$459,697.00**

GEORGE C. & BARBARA J. SMITH
4326 Lyon Drive
Columbus, Ohio 43220
Statement of Financial Position
June 30, 1987

LIABILITIES

Current Liabilities		
Mortgage Payable - Fifth Third Bank Note 8	$ 1,483.00	
Credit Cards - VISA and Mastercard	953.00	
Total Current Liabilities		$ 2,436.00
Long Term Liabilities		
Mortgage Payable - Fifth Third Bank - Note 8	48,517.00	
Deferred Income Taxes - Note 9	20,000.00	
Total Long Term Liabilities		68,517.00
Total Liabilities		70,953.00
Net Worth		388,744.00
TOTAL LIABILITIES AND NET WORTH		$459,697.00

FOOTNOTES TO STATEMENT OF FINANCIAL POSITION

NOTE 1

The assets, liabilities, and net worth are stated at fair market value in accordance with Statement of Position 82-1 issued by The Accounting Standards Division of the American Institute of Certified Public Accountants.

NOTE 2

The Certificate of Deposit in the Fifth Third Bank matures March 31, 1988 and pays 7.5% interest. Proceeds from the refinancing of the Smith's principal residence were used to fund the CD as well as establishing a savings account in the amount of $5,000.00 (5.5% interest at Fifth Third).

NOTE 3

Individual retirement accounts are owned by George (age 51) and Barbara (age 49). The approximate balances at June 30, 1987 are $8,971.00 and $5,656.00. To date, there have been no distributions. The IRA accounts consist of the following:

	George	Barbara
Cash	$ 6,323.00	$ 4,332.00
Staar Surgical	2,648.00	1,324.00
	$ 8,971.00	$ 5,656.00

NOTE 4

The following investments are held by the Smith's at June 30, 1987:

	Security	# of Shares	Market Value Per Share	Fair Market Value
1.	J.C. Bradford Daily Cash Accumulation Fund	10,205	$1.00	$10,205.00
2.	Wendy's Intl.	1,327	9.62	12,766.00
3.	G.D. Ritzy's	237	.87	206.00
4.	Galveston-Houston, Inc.	300	3.87	1,161.00
5.	Staar Surgical, Inc.	1,000	6.62	6,620.00
6.	Vision Sciences, Inc.	100	2.25	225.00
	TOTAL	13,169	N/A	$31,183.00

NOTE 5

George and Barbara's residence in Columbus, Ohio was appraised by Holzer, Wollam at $167,000.00. That valuation incorporates the selling prices of similar residences in the neighborhood during recent months.

NOTE 6

The twin single at 1740-1742 Ridgeview Road, Columbus, Ohio is valued at $150,000.00. George and Barbara were gifted a remainder interest in the twin single by George's mother, Dorothy R. Smith. The value of the remainder interest, given Dorothy, the life estate holder's age, is $81,967.00.

NOTE 7

George Smith owns a whole life insurance policy on his life in the amount of $100,000.00. The primary beneficiary of the policy is Barbara.

NOTE 8 MORTGAGE

George and Barbara paid off their mortgage to Nationwide Insurance as of June 30, 1987 and obtained another mortgage for $50,000.00 with the Fifth Third Bank. Principal and interest payments are $544.98 per month over fifteen years beginning August 1, 1987. The interest rate is fixed at 10.25%.

NOTE 9

Deferred income taxes are income taxes payable upon the sale of all the assets in order to liquidate the Smith's holding to cash. Thus, deferred income taxes have been provided on the excess of the estimated current value of the assets over their bases using applicable tax laws and regulations. The provision will differ from the amount of income taxes that eventually might be paid because those amounts are determined by the timing and the method of disposal or realization and the tax laws and regulations in effect at the time of disposal or realization. Further, it is assumed that Internal Revenue Code Section 1034 would be utilized to minimize any tax on any gain realized by the disposition of a personal residence.

III. GENERAL (PUBLIC)

1. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the perogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;
(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Preface:

It is my opinion that a federal district judge must continually be tempered by and always mindful of the separation of powers doctrine. Though our Constitution rightfully prescribes checks and balances between the branches of government, a federal judge must nonetheless be sensitive to the responsibilities and perogatives of the other branches, as articulated by the original proponents of our federalist thinking. To this end, the legislative branch is established to enact laws ordering our society; the executive branch is established to execute those laws; and finally, the judicial branch is established to interpret those laws and executions thereof. This judicial responsibility is then somewhat paradoxical for it requires a federal judge to adhere to stringent "interpretative" perogatives over those enacted laws, while at the same time demanding the adjudication of fair and effective outcomes to societal disputes brought for resolution in that particular forum.

1a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

I can say that a large adjustment I made on leaving the position of elected Prosecuting Attorney in favor of the bench, was to change my "focus". Candidly, as Prosecuting Attorney, and therefore as the chief advocate of the State of Ohio, I was overwhelmingly concerned with specific ends, i.e. namely successful

prosecutions. As a judge, though, I had to shift that focus on the end, and instead concern myself with strict recognition of legislative enactments or the common law, irrespective of what I desired the ultimate outcome to become. As a judge, I had to become an exclusive advocate of the legal system; I could no longer champion a particular interest or cause. I came to realize that the judicial system is not blessed with the resources required to effectively, on a purely prospective basis, address societal problems. That is better left to the legislative and executive branches of government

While the foregoing may imply judicial restraint, that is not to say that a judge is wholly unequipped or unable Constitutionally to creatively address issues and grievances of society. A judge can only do so with full recognition that he/she is limited to the cards that are dealt (facts of the proceeding; the issues and how they are specifically framed; the method in which parties' rights are articulated and advanced; and ultimately the legal scheme enacted to adjudicate those facts, issues and rights). As a result, I have energetically attempted to utilize the temperment necessary to resist the urge of adjudicating a resolution in which the "ends" are justified by the "means".

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

A plaintiff who in all respects is properly before the Court may at times appear to represent interests far outreaching those issues to be presented. The role of the judiciary is not to be tempted to promulgate a solution that outweights the issues before the Court. The role of the Court is to affectively reach a just and fair result; a result that protects the interests of the parties before it. However when interests other than those of the original parties are affected by a ruling in a particular case the Court may have overextended its authority, thereby bringing in parties not properly before the Court. Therefore, the Court should reach its decision by using judicial restraint.

(c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

Any time the judiciary imposes broad, affirmative duties upon both government and society, it is legislating - a function Constitutionally designed for another branch of government. This, then, implies some trespass of the separation of powers.

To that extent, though, that legisatures will always be hard-pressed to exercise the forethought required to prospectively address all of society's up and coming problems, the courts will be required to fill this void when demanded by equity and democracy. Arguably, the common law and stare decisis were products required to fill the gaps of legislative silence. Furthermore, because the English language is imprecise, enactments must be interpreted. Judicial interpretations of legislative enactments will necessarily, at times, bring about the levying of affirmative duties on groups of people. The Court should, in my opinion, be reluctant to do so, except in instances where the interpreted legislative intent is more palatable than to usurp legislative authority by "legislating".

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness;

Standing and ripeness are just two procedural safeguards afforded the federal bench. Classically, standing has been defined such that a party is said to be improperly before the Court when the solution so desired will ineffectually procure a benefit upon the complaintant. To wit, a party is not aggrieved merely because a law or statute operates to burden his or her particular interest. To properly assert standing, said party must first show that any decision offered by the Court will ultimately alleviate the party's concern. Mere dislike of a particular law or statute is not enough to assert standing.

Ripeness on the other hand, results in lack of standing when a case or controversy fails to assert the need for just adjudication at this particular time. The merits of the case may be sound, but as to the timing of the issue, the Court is awarded great latitude so as to allow the dispute to fully develop. The loosening of standing and ripeness requirements only further open the Court to judicial activism. A case which should be summarily dismissed for improper standing, suddenly becomes a part of the Court's proceedings offering resolutions to problems either improperly before the Court or before a case has had time to fully develop. A federal judge should temper himself to the procedural requirements needed for proper adjudication, thereby limiting the Court's access only to those disputes deserving the Court's attention.

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

My thought on this issue parallel the thought advanced in the preface and subparagraph (a) above. The judiciary was not set up to primarily enact and/or execute laws. The enactment and the execution of laws are meant for other governmental units.

Despite this elementary demarcation of powers and perogatives, the checks and balances system, through the use of mandamus, receiverships and other review-control mechanisms, at times warrants a judicial imposition upon other institutions. To the extent that the judiciary has the inherent interest in seeing to it that its orders and decrees are implemented, the judiciary will necessarily be confronted with the opportunity to "administratively" see to their effective implementation. This requires some administrative oversight and sanctions.

The paradox facing a federal judge, then, is when to employ "administrative" imposition, and when not to. Quite frankly, I am certain that I do not have a hard and fast rule on this, but it is my general persuasion that the federal district court should exercise "cautious restraint" in this regard. The Court should never impose itself as an administrator when a governmental unit other than the Court is available to do so lawfully. When the Court's integrity to carry out its Constitutionally warranted dictates is challenged, however, the Court then, though cautious in doing so, must extend its authority to other institutions.

2. What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.

Probably the most significant single motivation to become a lawyer was a personal concern for equal justice. I firmly believe that no man or woman is above the law. Fortunately I have had the opportunity via a career in public service to actively pursue even handed justice on a daily basis. Beginning as a legal investigator in the City Prosecutor's office in 1959, I have striven to be fair and sincerely interested in the complainant and his or her problem as well as the position and response of the target of the complaint.

To have compassion for the probationer who is perhaps unemployable and can not comply with the employment and/or monetary restitution requirement

of his probation is just an example of an important every day attitude that I follow in my work as a judge and previously as a prosecutor.

While I was an active member of the National District Attorneys Association I established one of the first screening and diversion programs in the country. This provides a vehicle for the non-violent offender to be given a second chance. The offender enters a probation type program complete with an advisor to obtain employment, completion of education and other helpful guidance so that the diverted person can become a productive member of society rather than a felon.

Another significant program which I instituted in the Prosecuting Attorney's office with a view toward equal justice was the N.D.A.A. initiated Victim-Witness Assistance Unit. The object of this effort is to provide staff moral support and assistance for the victims of crime. Women and children who have been subjected to sexual assault and abuse are the prime beneficiaries of this program. The indigent accused is given the benefit of counsel, investigators, etc. to assist them every step of the way. The complaining witness is left on their own to come into unfamiliar surroundings with perhaps only a brief meeting with a busy state's attorney. Many times the Victim-Witness Assistance staffer sits in the courtroom during the testimony and makes all arrangements for the court appearances including child care. This somewhat equalizes the victim with the accused in the judicial process.

As my background has been primarily in the government area, my opportunities to promote pro bono legal service to the disadvantaged or indigent has been in the area of providing appointed counsel to those qualifying.

As Prosecuting Attorney I was National Chairman of the Career Criminal Program which provided expedited prosecution of dangerous repeat offenders. While I had established a unit of experienced trial lawyers to present these cases to the grand jury and the trial juries, I also supported the Public Defender's office in Franklin County in their efforts to obtain a grant to provide defense counsel on an expedited basis. This provided a speedy trial for both the state and the accused.

As a judge, serving at the municipal and common pleas level, I have consistently supported the appointment of enthusiastic, qualified lawyers

to represent the indigent. This includes support personnel such as experienced investigators and experts. In capital murder trials I have appointed psychologists and psychiatrists and other witnesses with expertise in their fields to assist the defense so that the trial will provide justice for all concerned.

CONFIRMATION HEARING ON: R. KENTON MUSGRAVE AND WILLIAM L. DWYER

THURSDAY, OCTOBER 22, 1987

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:10 p.m., in room SD-226, Russell Senate Office Building, Hon. Patrick J. Leahy, presiding.

Also present. Senators Thurmond and Grassley.

Staff present: Steven J. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; Robert J. Short, minority chief investigator.

Senator LEAHY. The committee will come to order.

This afternoon we will hold our 12th hearing in this Congress to consider nominations to lower Federal courts. Today we are going to take testimony on two nominations. The first is the nomination of R. Kenton Musgrave of California to be a Judge for the Court of International Trade; the second is the nomination of William L. Dwyer to be U.S. District Judge for the Western District of Washington.

The hearing in the Dwyer nomination was held on September 11th. At that time we took the testimony of the nominee and heard from the two Senators from Washington in support of the nominee. We also invited testimony from every individual who contacted the committee prior to the hearing and requested an opportunity to testify. Two witnesses in favor of the nomination appeared; no witnesses in opposition to the nomination chose to attend.

I believe that the September 11th hearing provided an adequate record for committee action on this nomination. However, the ranking minority member of the committee was not able to attend that hearing and requested a second hearing be held. This afternoon's hearing is being held in response to that request, and, of course, the Senator from South Carolina is totally within his rights in requesting that. I thank him for his cooperation in scheduling the second hearing promptly.

This afternoon, after hearing from Mr. Musgrave, we will hear——

Senator THURMOND. Just a minute, Mr. Chairman. Let me say a word.

Senator LEAHY. I just complimented you.

Senator THURMOND. I do not need any compliments. I want to say a word here.

We had the request of some witnesses who oppose this nominee, and I explained that to you. So, therefore, we requested a second hearing. I am anxious to hear what both sides say. I am open-minded. I did not ask for a second hearing because I am opposed to him, but I just want to get at the facts.

Senator LEAHY. I cannot think of any better reason for having it.

As we customarily do, we will hear first from Senators who wish to introduce the nominee to the committee. Before we turn to Senator Wilson, let me note for the record that Mr. Musgrave, like all other nominees, has completed an extensive questionnaire on his qualifications, experience and financial situation. The publicly available portions of these questionnaire responses will be printed in the record of this hearing. We will also keep the record open for a limited time for follow-up questions to the nominee or additional questions that may be submitted by members of the committee who are unable to be present this afternoon. Of course, we will include in the record the full statement of Senator Wilson.

Before I turn to Senator Wilson, did you wish to make any opening statement, Senator Thurmond?

Senator THURMOND. No, I do not have any opening statement. We are glad to have you with us, Mr. Musgrave. I notice you have Senator Wilson sitting by your side, so you have got a strong ally here to help you.

That is all.

Senator LEAHY. Senator Wilson, it is all yours.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman. Senator Thurmond, Senator Grassley, I am delighted to have the opportunity which you have afforded me today, and I very much appreciate your having scheduled this hearing to consider the nomination of R. Kenton Musgrave to serve on the U.S. Court of International Trade.

Mr. Musgrave is an attorney possessing an exceptional level of experience. I therefore was very pleased when the President accepted my recommendation and nominated Mr. Musgrave earlier this year. As an attorney for almost 35 years, he has attained an in-depth knowledge of the law that particularly well qualifies him for service on the trade court.

Mr. Musgrave has worked in senior legal positions for some of our country's largest corporations and also has had extensive private practice. In these positions, he has been called upon to address a broad range of legal issues involving international trade and customs law, the very matters within the jurisdiction of the court to which he has been nominated.

While many of these issues are esoteric, they are of great important to the free and—I emphasize—fair flow of commerce in the United States. For example, the U.S. Court of International Trade is responsible for reviewing certain decisions of the Customs Service. It also has jurisdiction, as the committee well knows, to review

certain important trade decisions of the International Trade Commission such as those relating to countervailing duties and dumping cases.

Mr. Chairman, one of the fundamental bases of the economy of my State of California is international trade, both imports and exports. Indeed, the ports of Los Angeles and Long Beach clear more goods than virtually any other port in the country.

With such a vibrant economy, the trade community is as varied as any in the country, and with this in mind, it is more than worth nothing that Kenton Musgrave's appointment to the U.S. International Trade Court is supported by the entire Southern California trade community, as indicated by endorsements from the Los Angeles Chamber of Commerce and the Foreign Trade Association of Southern California.

Mr. Chairman, the committee is in possession of the documents that detail the extensive experience and record of accomplishment of Mr. Musgrave in the private sector, so I will not take more of the committee's time this afternoon. In the interest of allowing you to proceed expeditiously to questions of him, I will simply conclude by urging the committee to move expeditiously and favorably report Kenton Musgrave's nomination to the full Senate so that he may begin his service on the bench. I am convinced that you will feel good about that, that his service will warrant our confidence, and that he will serve with distinction.

Thank you very much.

Senator LEAHY. Thank you very much, Senator Wilson. I know that you probably have a very busy schedule anyway. You are welcome to stay, but if you have to leave, we will understand that, too.

Senator WILSON. I appreciate that, Mr. Chairman. I will leave Mr. Musgrave in your good hands.

I would ask the indulgence of the committee in one further courtesy. His family is with him today, and I wonder if we might ask Mr. Musgrave——

Senator LEAHY. I was going to ask him before we swore him in to introduce his family. Why don't you go ahead and do that right now, Mr. Musgrave?

Mr. MUSGRAVE. Thank you, Mr. Chairman. My wife Ruth Hoppe Musgrave is here with me and my son Kenton Musgrave

Senator LEAHY. We welcome you to the committee. I am sure this must be a proud day for both of you.

Senator WILSON. Thank you very much, Mr. Chairman.

Senator LEAHY. Mr. Musgrave, would you please rise and raise your right hand. Do you solemnly swear that the testimony you will give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MUSGRAVE. I do.

TESTIMONY OF R. KENTON MUSGRAVE, OF CALIFORNIA, TO BE U.S. JUDGE FOR THE COURT OF INTERNATIONAL TRADE

Senator LEAHY. Mr. Musgrave, did you have any opening statement? It is not required, but I did not know whether you had an opening statement before we started questions.

Mr. MUSGRAVE. No, Mr. Chairman.

Senator LEAHY. Thank you.

We asked you in the questionnaire which is sent to all nominees to explain "How you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern?" And your response was, "No conflicts are foreseen."

Maybe I could pose the question in another way. You served in 1979 to 1985 as the Vice President and General Counsel at Vivitar Corporation. You represented them in trade-related matters, including at least one case that was decided by the Court of International Trade, the court to which you have been nominated. I would assume that Vivitar or its new corporate owners will probably well have other cases before that court.

Let me ask the question this way: What if a case involving this corporation of which you were an officer until a couple of years ago comes before you as the judge of the Court of International Trade? Do you think that it would present a conflict of interest or some other grounds for you to recuse yourself?

Mr. MUSGRAVE. Mr. Chairman, while I personally would not see a conflict of interest in my sitting on such a case, the appearance of a conflict would be sufficient for me to recuse myself.

Senator LEAHY. Thank you. And I agree with you on that.

You are now Vice President and Director of Santa Barbara Applied Research. You said this is a company that handles international transactions for Taiwan and other Far East interests. What if a case involving one of those Far East interests were to come before your court? Should you sit on that case, or should you recuse yourself?

Mr. MUSGRAVE. Mr. Chairman, while I have resigned those positions with that company, I would recuse myself.

Senator LEAHY. And one other area. Your net worth statement indicate that you own stock in more than 40 corporations. Some of these corporations may have cases before the Court of International Trade. If you were still a stockholder in one of the parties before the court, how would that affect your decision to hear a case involving them?

Mr. MUSGRAVE. Well, in such an event, Mr. Chairman, where my holdings are extremely small, I would think the perception of conflict would be slight. However, I would consult with the chief judge, and my surmise is that he would suggest that I recuse myself. If he were to do so, I would follow his advice.

Senator LEAHY. Would that be giving consideration to the question of appearance of conflict?

Mr. MUSGRAVE. Yes.

Senator LEAHY. Obviously, if you felt there is a direct conflict, that raises no question in your mind? If you felt there was a direct conflict, you would recuse yourself?

Mr. MUSGRAVE. That is correct.

Senator LEAHY. The concern that we have, of course, is in the area of appearance.

You said you have been in semi-retirement and have not appeared in court the last couple of years. This court is a pretty active court. It is full-time. I think some of the judges on it say that it is a lot more than full-time. What prompts you to want to come

out of semi-retirement and go into a court like this? I am just curious.

Mr. MUSGRAVE. Well, Mr. Chairman, I have always been interested in this court. I have always been active during my legal career in international trade matters, and the chance to be of public service in a field of particular interest seems one that I cannot refuse.

Senator LEAHY. Well, you have had an outstanding legal career, both as corporate counsel and as a private practitioner, a lot of experience in trade and customs law matters. You have not been a judge before, and everybody who becomes a judge, unless they are moving from one court to another, are doing so for the first time. What do you think is going to be the biggest challenge moving from being a private practitioner, an advocate, to becoming a judge?

Mr. MUSGRAVE. Well, addressing both sides of the question, obviously, will be new. I have been an advocate during all of my career. On the other hand, I think that I have had a great deal of experience in negotiating settlements, both at the administrative and at the court level. And I do not perceive any difficulty in making the transition.

Senator LEAHY. Incidentally, I compliment you on your decision on the Palos Verdes Breakfast Club. I know you must have an awful lot of friends there, and that is a difficult decision to have to make just from a pure question of people that you probably used to associate with. But, unfortunately, like so many other things, with the standards that judges are held to, those decisions have to be made. I compliment you on it.

Mr. MUSGRAVE. Thank you.

Senator LEAHY. Incidentally, you did participate in the evaluation process of the Customs and International Trade Bar Association, did you not?

Mr. MUSGRAVE. Yes.

Senator LEAHY. I should note for the record that they have sent a letter supporting your nomination. I would assume you would have no objection if I asked to have that letter put in the record at this place, too.

Mr. MUSGRAVE. I would not have an objection.

Senator LEAHY. I did not think so.

[The letter follows:]

CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION
475 PARK AVENUE SOUTH
NEW YORK, N.Y. 10016
(212) 725-0200

DAVID O. ELLIOTT
PRESIDENT

RECEIVED JUL 2 9 1987

July 27, 1987

The Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: R. KENTON MUSGRAVE
United States Court of International Trade

Dear Senator Biden:

The purpose of this letter is to inform you of the opinion of the Board of Directors of the Customs and International Trade Bar Association pertaining to the nomination of R. Kenton Musgrave for appointment as Judge of the United States Court of International Trade.

Our Board of Directors is unanimously of the opinion that Mr. Musgrave is "Qualified" for this appointment. We have received and reviewed Mr. Musgrave's responses to our questionnaire and to that of the American Bar Association. Members of our Judicial Selection Committee interviewed him on March 13, 1987. Also a number of our members have had professional dealings with the nominee in various customs and trade matters over the years.

Our Board was greatly impressed by Mr. Musgrave's involvement of more than 20 years in commercial and trade matters involving domestic and overseas interests. We believe that this background is especially pertinent to the subject matter over which the court has jurisdiction. Mr. Musgrave indicated to us that he had no "trade philosophy" that would come to bear on matters under judicial review, but that, if confirmed, he would be guided by applicable statutory and regulatory policy.

Mr. Musgrave appeared to us to possess judicial temperament, to have a pleasant bearing, and to be knowledgeable, thoughtful, open-minded, and prepared ably to embrace a challenging workload. This is consistent with his impressive career accomplishments.

Sincerely,

David O. Elliott

PLEASE REPLY TO:

Senator LEAHY. Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman.

Senator LEAHY. Now come the tough questions.

Senator THURMOND. Mr. Musgrave, the Customs Court Act of 1980 provided for the Court of International Trade. This court has jurisdiction over any civil action against the United States arising from Federal laws governing import transactions.

What difficulty, if any, do you foresee in meeting the challenges of this specialized court?

Mr. MUSGRAVE. Senator Thurmond, I am sure that I will have to go through a learning process, but because of the fact that I have been involved in customs law and related matters for so many years, I do not anticipate a difficulty in handling these as they come before me.

Senator THURMOND. Mr. Musgrave, are there ever circumstances under which a judge should attempt to establish new judicial precedents? And if so, what are the criteria that you would use in order to determine the propriety of reversing an existing precedent?

Mr. MUSGRAVE. Well, I believe that the law should have continuity and, to the extent possible, a sureness of what the law is. I would not lightly overturn a previous decision of the Court of International Trade or the former U.S. Customs Court.

I suppose that there could be matters of such importance that if a holding were, say, several decades old and new facts indicated that there had been an evolution in the law and other courts, possibly on those grounds one might make a distinction. However, where the law is settled, it is my opinion that the legislature should make any appropriate changes rather than the court.

Senator THURMOND. I have no further questions, Mr. Chairman. I congratulate you on your appointment and wish you well.

Mr. MUSGRAVE. Thank you, Senator.

Senator LEAHY. We have a couple of written questions for you on confidential matters of a routine nature, and we will submit those.

Unless you have a further statement or anybody here has a further questions, I guess that is it.

Mr. MUSGRAVE. Thank you very much.

Senator LEAHY. I hope you and your wife and son will be able to enjoy the rest of the day. It is a lovely fall day out there.

Mr. MUSGRAVE. Thanks again.

Senator LEAHY. To go back to the Dwyer matter, the first panel is Andrea Vangor, the executive director of Washington Together Against Pornography, Seattle, Washington. Ms. Vangor, please come up. Bruce Taylor, general counsel, Citizens for Decency Through Law, Scottsdale, Arizona; Ann Burgess, professor of nursing, University of Pennsylvania, Philadelphia, Pennsylvania—who has, I understand, a family emergency and is unable to be here. And Bruce Fein, scholar of the Heritage Foundation, Washington, D.C.

Would the witnesses please stand and raise your right hand? Do you solemnly swear that the testimony you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. VANGOR. I do.

Mr. TAYLOR. I do.

Mr. FEIN. I do.

Senator LEAHY. Let the record show that all three have been sworn. With Ms. Burgess gone, we will still, at Senator Thurmond's request, keep the panel to the full 25 minute that we had originally said. The red light will come on at the end of 25 minutes. Rather than break that down by thirds, we will make the panel 25 minutes. Certainly all of you feel free to take whatever time you want. I will let you divide it up. The next panel can divide it the way they wish.

So whoever wishes to start, do not feel at all nervous that the others are watching the amount of time you take because it cuts into theirs.

Go ahead.

TESTIMONY OF PANEL CONSISTING OF ANDREA K. VANGOR, EXECUTIVE DIRECTOR, WASHINGTON TOGETHER AGAINST PORNOGRAPHY, SEATTLE, WA; BRUCE A. TAYLOR, GENERAL COUNSEL, CITIZENS FOR DECENCY THROUGH LAW, SCOTTSDALE, AZ; AND BRUCE FEIN, SCHOLAR, HERITAGE FOUNDATION, WASHINGTON, DC

Ms. VANGOR. Thank you very much, Mr. Chairman, Senator Leahy, and Senators.

I would like to say for the record that we are submitting statements supporting our position from many individuals representing national groups dealing with child sexual exploitation and child pornography who would have liked to have been here. These include the Adam Walsh Foundation, the National Center for Missing and Exploited Children, Dr. Anne Burgess from the University of Pennsylvania, Toby Tyler from the San Bernadino Sheriff's Department in California, and Diane Oberquell from Families and Friends of Missing Persons and Violent Crime Victims in our State. And I also will submit a letter from A. J. Michalak of WISH of Kirkland, which is in support of us.

We wanted to bring up some issues. I am the executive director of a State grassroots anti-pornography organization, called "Washington Together Against Pornography," which has been operating in the State of Washington for several years, first as another group by the name, "Eastside Citizens for Decency Through Law."

Our concerns with this nomination are focused around a controversy over a child pornography matter relating to the book "Show Me."

Our complaint about Mr. Dwyer is, first, that when he was retained to give objective and impartial legal advice to the Seattle Public Library about State and Federal pornography law, about the specific legal status of this book, "Show Me," that he misrepresented the facts, and he misrepresented the truth about those laws.

We secondly contend that he misrepresented the nature of this book, which is no longer published or sold in this country subsequent to the landmark and unanimous ruling on child pornography, *N.Y.* v. *Ferber,* 1982.

The book does contain numerous photographs of children under 16 years of age, as attested by the publisher, who is ready to admit that he ceased publication because of the new child pornography

laws upheld by *Ferber* and particularly in New York. The book contains photographs of minors under 16 years of age performing a whole gamut of sexual activities ranging from exhibition of the genitals and touching of breasts and genital parts to masturbation, to oral and vaginal copulation, and to rectal penetration, all of which is illegal under the new State and Federal child pornography laws.

We further contend that Mr.. Dwyer misrepresented himself to this committee in many ways. He did not account for the reputation he enjoys in the libertarian community as a first amendment expert. He did not account for his career over the past 30 years as an ACLU leader. This is documented, by the way, among the 44 items of evidence which I have provided this committee. That he is and has been an active member and leader of the ACLU is pretty obvious.

We further contend that he misrepresented the role he played to the Seattle Public Library when he told this committee that he only advised them in terms of probabilities as to whether "Show Me" would or would not be found illegal under State and Federal law.

The record shows that he said, very unequivocally, the courts would clearly hold that this book has serious legitimate value as an educational resource, and went on to comment that therefore it would not be considered illegal child pornography.

That is not a probability statement.

I will add too something that no one seems to have brought to your attention, so I will, that at that Seattle public hearing where Mr. Dwyer was quoted, he spoke at length on the constitutional issues surrounding child pornography law and the book "Show Me." We have done our best to obtain a copy or transcript of that public hearing where all of the Library Board Members spoke and where the City Attorney of Seattle spoke and Mr. Dwyer spoke. No one has provided it. And I would certainly encourage the committee to obtain a transcript or tape which we know can be obtained from media in Seattle. We would be happy to show it to you. I was present and I can tell you what I remember.

Finally, we want to point out that Mr. Dwyer has misrepresented a very important fact, or omitted to tell you. I noted in his testimony of September 11 that he states in more than one place that, to the best of his knowledge and belief, "Show Me" has never been reviewed under a child pornography law in this country. He makes quite a point of this. He makes quite a point of saying that he wishes it would have been, that he would like to be guided by such a case.

I also note from the personal information he has given you that Mr. Dwyer plays racquetball on Bainbridge Island, which happens to be in Kitsap County, Washington, a short ferry ride from Seattle.

Bill Dwyer said in a public hearing that "Show Me" could not be found to be child pornography for a specious reason: because it has, he says, educational value which, by the way, our expert witnesses would and will heartily rebut.

He said that there was no evidence that it had ever been taken to court under a child pornography law. A month after he said that

it could not be found illegal, a conviction occurred in a court in Kitsap County. The case is *State of Washington* v. *Hugh Jefferson Marshall.* This was a case of simple possession of child pornography, probably the first one in our State. Our State is one of a handful of States, 10 so far, in which the child pornography law contains a clause making it illegal to possess the material for private use.

Mr. Marshall was found guilty on 62 items of simple possession of child pornography. Sixty-two pieces of evidence were introduced. The 62nd one is the book "Show Me." That case was appealed, first to the Superior Court in Kitsap County, secondly to the Court of Appeals, finally to the State Supreme Court.

Along the way, and I've provided you with this documentation, his attorney made a specific point of the fact that the State child pornography law did apply to "Show Me" and, in fact, challenged the appeals court to rule on the question of the legality of "Show Me," point-blank telling them when you rule on the conviction of my client, you are ruling on the legality of "Show Me."

The response of the State court of appeals was to say we don't find the law unconstitutional, we don't find the law overbroad, we don't find a compelling State interest to guarantee citizens the right to possess any of this material, and they upheld the conviction.

Our State Supreme Court refused to hear this case, dismissing it as a matter of settled law.

I don't understand how Mr. Dwyer doesn't know this if I do. This is the issue which has tied up his confirmation for quite a long time now. It was published in the Bremerton Sun, which is one of the major newspapers in the State. It went through the higher courts of the State, up to the State Supreme Court. I found out about it. I don't know how he can testify to this committee that, to the best of his knowledge and belief, nowhere in the United States has this book been examined under child pornography law. I don't get it.

I will just finish my remarks at this time by saying that we are an anti-pornography organization. We have locked horns with the American Civil Liberties Union more than once, and will again.

When we heard of the nomination of Mr. Dwyer, we were concerned, as indeed someone might be concerned over the nomination of a member of the Ku Klux Klan. You would ask this person, as a member of an organization which has taken a public position against laws designed to protect someone's rights, have you gone on record about it? We're concerned whether you're prepared to uphold those laws.

Now, the ACLU has gone on record, State and national, against the existence of laws dealing with the distribution and sale and display and private possession of child pornography. That's their public position. They're on the record nationally. They're on the record in my State. We're concerned, or were concerned, or would be concerned with any ACLU member, an active member, one who has been involved in porno issues, one who has taken a number of pornography cases. One in fact, as in the case of Mr. Dwyer, who argued a case before the U.S. Supreme Court, which he won, defending the right of a theater to show an X-rated film; one who has

drafted legislation for the pornography industry which Mr. Dwyer did when he helped to prepare a State law for periodicals distributors who are supplying pornography magazines to retailers in my State, a law which, by the way, is totally useless to this day.

We would be concerned whether this person would put aside the record of his own organization, of which he has been a board member, a cooperating attorney and so forth, and uphold those laws.

We don't have a lot to wonder about here because Mr. Dwyer is on the record. When he said the courts would clearly rule, the courts would clearly hold that this book is not child pornography, as far as we're concerned, he said my court would clearly hold that this book is not child pornography because I claim it has educational value.

Even though this book has been identified as the single item most commonly found in the possession of child molesters in this country, even though it turns up in evidence rooms all over the country where children are molested, even though the publishers saw fit to advertise it in pornographic magazines like Hustler when it was first published, for all those reasons to the contrary.

So we think there are some serious issues here which we would like the committee to resolve.

And I'll turn my time over now to Bruce Taylor.

[The statement of Ms. Vangor follows:]

Statement on the Confirmation of William Dwyer to the Western Washington District Court

Andrea K. Vangor, Ph.D.
Executive Director, Washington Together Against Pornography

I. Background.

I am the state director of a grassroots anti-pornography organization called Washington Together Against Pornography. We originally organized as a small local group based in Bellevue, Washington, called Eastside Citizens for Decency Through Law. Our interest in the confirmation of William Dwyer is due to the role he played in a public controversy which began in early January, 1985.

At that time, a woman called me to say that she had been in communication with a California sheriff named Richard P. (Toby) Tyler, an expert on child pornography. Mr. Tyler had told her that a book called Show Me!, which he considered to be illegal child pornography, might be found in the public libraries in our state. We decided to go immediately and see for ourselves. We went to the Seattle Public Library main branch in downtown Seattle.

Having then seen the book, we made an appointment with the King County prosecutor, Mr. Norm Maleng. Two other people from my organization and I met with him and his staff members. One, Bob Lasnik, took the most active role in the issue as it developed. We asked Mr. Maleng to examine the book, to determine its legal status in light of the current state (exhibit 1) and federal (exhibit 2) child pornography laws, and to advise the library that it was in violation of these laws. We then wrote a letter to the library, informing them of our concern (exhibit 3).

A regular Seattle Public Library Board meeting occurred within a few weeks. We attended and read a second letter to the board members (exhibit 4). A staff person from the victim-rights group, Families and Friends of Missing Persons and Violent Crime Victims, also read a letter of protest (exhibit 5). I am not sure whether Mr. Dwyer was present at this meeting, but I do know that his name was mentioned about this time as legal counsel to the library board.

Doug Jewett, the city attorney of Seattle, had confided in me privately that he agreed with our position on Show Me!, so much so that he had refused to provide legal counsel to the library board himself. I remember asking him in a later telephone conversation why he did not make his opinion public.

Meanwhile, Bob Lasnik assured me that he had a plan to persuade the library board into reasonableness, and asked us

to let him pursue it without interference. I agreed, but had to warn him that he had no idea what he was getting into. I had good cause to doubt that the library people would listen to reason on the matter of child pornography. First, because they openly espoused the extreme libertarian views of the American Civil Liberties Union, an organization which is on record nationally and in our state, as favoring the complete legalization of obscene material and the legal sale and distribution of child pornography. This is documented by their testimony in the recent pornography commission hearings, and in my state by public comments on television and radio programs and the news media.

Second, because I had had enough conversations -- or debates -- with library staff and board members to convince me that they believed firmly in their right to continue to provide such adult fare as Playboy magazine to children without the parents' knowledge and consent, according to the library "bill of rights" adopted by the American Library Association in 1982. The library people could never admit that parents, not library staff, ought to have the final say regarding the type of sexually explicit material to be made available to minors in public libraries.

Bob Lasnik eventually produced a brief on behalf of the prosecutor's office for the benefit of the Seattle Library Board, dated April 5, 1985 (exhibit 6). In it, he described the evolution of child pornography laws and their purpose. He specifically identified Show Me! as falling within the "purview" of the state child pornography law, commented that the children used in its production were necessarily exploited sexually, and reminded the library board that libraries were not exempt under current state law.

We had supplied Mr. Lasnik with names of national authorities who might offer useful information (Toby Tyler, the legal team at Citizens for Decency through Law, Inc. in Arizona, Supervisory Special Agent Kenneth Lanning of the F.B.I., and others. Mr. Tyler and Mr. Lanning had provided informative letters to me (exhibits 7, 8). From such sources and others, I had also obtained copies of advertisements for the book in old issues of the pornographic magazines Hustler and Chic (exhibits 9, 10).

Another interesting piece of evidence which we obtained is the testimony from a 1982 hearing in the United States Senate, Committee on the Judiciary, Subcommittee on Juvenile Justice (exhibit 11). This group, chaired by Senator Arlen Specter, was engaged in a review of current federal child pornography law, just after the U.S. Supreme Court had made its landmark, unanimous ruling in New York v. Ferber, 1982 (exhibit 12). In this hearing, the publisher of the book,

Thomas McCormack of St. Martin's Press, acknowledged to the subcommittee that the child models performing the whole gamut of sexual activities in the book are under sixteen years of age.

The major point of the Ferber ruling was to confirm the right of lawmakers to ban the production, distribution, and sale of material produced by filming or photographing minors in the performance of actual or simulated sexual conduct. The high court gave two major reasons for its decision: that pornography produced with actual minors -- child pornography -- is necessarily produced without the informed consent of the victims, who cannot give that consent because of their minority; and that the child pornography material itself constitutes a grave threat to the safety of all children -- those used to produce it, those seduced by child molestors using it to lower their resistance, and those at risk for future exploitation by child pornography producers.

Bob Lasnik informed me that he planned to convince the library board, who by this time had determined to make the decision to keep or give up Show Me! as a group, by presenting to them the expert testimony of local and national authorities on child pornography and sexual abuse. These witnesses would present their arguments in a hearing, he told me. I was surprised to learn that the hearing would be closed to public view. I was more surprised that the prosecutor and city attorney -- and, I assume, Mr. Dwyer -- went along with the library board's plan for a closed hearing. Evidently they did not want the general public to know for themselves what sorts and quality of evidence the prosecutor and the witnesses had to show them.

Bob Lasnik was taken by surprise himself to learn that the library board was scheduling a second day of hearings with their own chosen expert witnesses from the ACLU and the American Library Association in Chicago. He was quite distressed to learn that they planned to exclude even him from this event. Shortly thereafter, the plan for closed hearings was blown away by protest from Seattle reporters, who complained that such a plan violated the state sunshine laws (exhibit 13).

As a result, the library board held another -- very brief -- public meeting on March 5, at which Mr. Dwyer was present. They announced that they chose not to hold any hearings at all, but would rather take testimony from experts and the general public on the issue. They gave the impression that their decision would be influenced by such testimony (exhibit 14).

Our organization decided to boycott the opinion-gathering process. We felt that matters of criminal law, as here, should not be decided by a popular vote. We further doubted whether any amount of public input would persuade the library board to drop Show Me!, and indeed that proved to be the case (exhibit 15). The nationally respected Sexual Assault Center at Harborview Hospital, staff members of which had been prepared to testify on our side, contributed their opinion (exhibit 16).

Finally, the Seattle Public Library board held a public hearing at the main library on May 3, 1985. One by one, board members came forward to announce their independent decisions. To a man and woman, they had decided to retain the book in the library collection. Doug Jewett, Seattle city attorney, commended them for this decision. Bill Dwyer spoke at length on the Constitutional issues. He commented that they had all become experts on the First Amendment and the Ferber case. I was present, along with a large crowd of library staff, reporters, and interested citizens.

We have recently attempted to obtain a videotape or transcript of the remarks made by the board members and Mr. Dwyer at this public hearing. Neither the city attorney, the county prosecutor, the Seattle Public Library, nor Mr. Dwyer will admit to possessing such a record of their contributions. However, some media in Seattle do, although they state that they will not release this information without a court subpoena.

All we have of Mr. Dwyer's remarks are those quoted in the next day's Seattle Post-Intelligencer (exhibit 17): "The courts would clearly hold that this book is serious in its purpose and that it has real, legitimate, substantial value as an educational resource. I don't believe there is a sufficient legal basis, under either the federal law or state statute, to justify removing the book from the collection of the library."

Almost immediately, the prosecutor's office issued a press release stating their intention to back off (exhibit 18). The reasons they gave are not only unsupported by the previous findings of the prosecutor's office, but are really nonsensical: that the library would have to be proven to possess the book in order to sexually stimulate viewers, and that the text of the book deserves protection, so that the book could not be illegal regardless of the photographs it contains. We rebutted these excuses (exhibit 19). Library director Ron Dubberly made his own explanations to library staff (exhibit 20), departing somewhat from fact.

We also invited the prosecutor to request the assistance of the state attorney general to resolve the problem of Show Me!. Mr. Maleng declined, implying that such intervention was not possible; the attorney general's office had informed us otherwise, citing RCW 43.10.232 (exhibits 21, 22).

Subsequently, the Eastside Citizens for Decency Through Law worked with the office of the state attorney general to develop legislation which will strengthen the state laws on child pornography and harmful-to-minors matter. We pursue these goals today as Washington Together Against Pornography, working with other organizations in the state as the Washington State Pro-Child Committee. We determined that the best use of the Show Me! controversy was as a means to educate the citizens of the state, and our lawmakers, about the threat to children posed by child pornography and about the socially irresponsible policies of the state library association (exhibit 23).

The Washington Library Association responded to the controversy by lobbying, in the 1986 legislative session, for Senate Bill 3036, which contained an amendment exempting state libraries from child pornography law. The WLA liaison to the American Library Association was Susan Madden, who testified with their lobbyist, Mark Allen, before the House Judiciary Committee on February 21, 1986. Ms. Madden and Mr. Allen are on record stating the goal of the Washington Library Association to be completely exempt from the state child pornography law. Mr. Allen comments further that it would be acceptable to them if book sellers were also exempt, and able to sell Show Me!.

Children in the Northwest, as elsewhere, continued to be molested by pedophiles using Show Me! as a tool to lower their inhibitions (exhibits 24, 25).

II. The Dwyer Nomination.

We in Washington Together Against Pornography announced our opposition to the nomination of William Dwyer to the Western Washington District Court as soon as it became public in July of 1986 (exhibit 26). In a September mailing, we sent out flyers in petition form, and collected several thousand signatures (exhibit 27). We continue to oppose the appointment of Mr. Dwyer (exhibit 28).

We do not want to see Mr. Dwyer appointed as a federal judge, for these reasons:

A. His record as a civil-libertarian activist. William

Dwyer was supposedly retained by the Seattle Public library board to provide them with impartial legal advice about child pornography law and the legal status of Show Me!. He was hired to act in a quasi-judicial capacity, for which he received taxpayers' money ($175 per hour has been mentioned). His job was to interpret both the state and federal laws on child pornography so as to guide the policy-makers in a publicly-funded institution. He ought to have done his job in an impartial and objective manner.

We maintain, however, that Mr. Dwyer instead performed his job as an activist, advocating an extreme libertarian position. It is obvious that the library board retained him in the first place because they knew for a certainty that his position on First Amendment issues would coincide perfectly with their own. They had every reason to believe so, because of his active involvement and association with the American Civil Liberties Union for the past 30 years. He has been identified since 1960 in their own publications as an expert on the First Amendment (exhibit 29). He has defended several cases for pornography distributors, notably the case he argued successfully before the U.S. Supreme Court on behalf of a drive-in theater (Rabe v. State of Washington, 1972; exhibit 30). It is peculiar that he failed to list this success on the questionaire he submitted to the Senate Judiciary Committee, since it is his one and only U.S. Supreme Court case.

Furthermore, Mr. Dwyer served the community of pornography distributors in Washington State when he drafted legislation for the state periodicals' association which supplies such material to retailers. His handiwork, under RCW 9.68.050, purports to protect minors under eighteen from exposure to harmful "erotic" material. The law he drafted, however, is so thoroughly unconstitutional as to pose no threat to pornography sellers who want to market their wares to minors. It cannot even protect children from child molestors who use pornography to facilitate their compliance (exhibits 31a, 31b, 32, 33).

Finally, we note that the Washington Library Association and Washington ACLU are of one mind that child pornography deserves Constitutional protection (see above; exhibit 34).

2. His propensity to distort and misinterpret laws prohibiting child pornography. William Dwyer deliberately misread the state and federal laws on child pornography when he gave his opinion to the library board and the public on May 3, 1985. He invoked the supposed educational value of Show Me! as a shield against prosecution. However, neither

state nor federal law allows this distinction (exhibit 35). Child pornography laws, following the U.S. Supreme Court ruling in New York v. Ferber, 1982, are very different from laws on obscene material. The latter are subjective, requiring the determination of judge and/or jury that the material meets the three-prong test in Miller v. California, 1973. There is room under the Miller test for subjective interpretations of value, merit, degree of offensiveness, and community taste.

However, child pornography laws by contrast have an objective structure. There are only two components of proof: the age of the person filmed or photographed, and the conduct depicted. The simple purpose of child pornography law is to prevent adults from taking minors and getting them to perform sexual acts, actual or simulated, which are then filmed or photographed. Where certain acts of explicit sexual conduct are depicted, no considerations of motive or purpose apply. This point was made clearly by the Supreme Court, by the Congress in the federal child pornography law (Child Protection Act of 1984), and by our state legislature.

The line which demarcates legal depictions of minors from illegal child pornography is the line drawn by these two tests of proof. This is also the reason why our state child pornography statute makes the failure to report suspected child pornography by film technicians a gross misdemeanor, the same penalty as for possession.

When Bill Dwyer pronounced his opinion, he ignored every advance made since 1982 to protect minors from this vicious form of sexual exploitation. He invoked a non-existent loophole, and in so doing denied the very existence of child pornography law as it is today. If Mr. Dwyer's views prevail in our courts, it will be impossible to prevent the production of more "educational" child pornography by adults who are clever and greedy enough to find ample excuse to put children through staged sex acts.

3. His clear preference for radical ideology over facts. Bill Dwyer deliberately misrepresented the nature of Show Me! as legitimate, valuable, and educational. The closer examination of the evidence in itself proves the wisdom of the child pornography laws, which allow no excuses where explicit sexual conduct by minors is concerned. Show Me! is a book wherein children perform sexual acts including oral and vaginal copulation, masturbation, and rectal penetration (exhibit 36). Advocates such as Bill Dwyer can excuse all this, because they are governed by an ideology which sacrifices facts to their radical agenda.

Show Me! is the book for which every excuse is made, every rationale invented, every good motive imputed -- and it is also the book which is called the "single item most commonly found in the possession of child molesters in the United States". Show Me! is the book which is found on site where child molesters seduce children (exhibits 37, 38, 39). Show Me! is the book advertised in pornographic magazines and sold in adult bookstores before it became illegal and publication ceased (exhibit 40). Show Me! is the book endorsed by the Renee Guyon Society, whose motto is "Sex by year eight, or else it's too late" (exhibit 41). If the defenders of Show Me!, including Bill Dwyer, want to persuade the citizens of Washington State to legalize such material, they have picked the wrong book to make their case.

4. His consistent lack of candor and honesty. William Dwyer has seriously misrepresented facts and suppressed relevant information in his responses to questions from the Senate Committee on the Judiciary. First, he suppressed relevant facts about himself, failing to account for the reputation he enjoys in the libertarian community as an expert on the First Amendment. He neglected to inform the Committee about his long term of service to the ACLU and about his work on behalf of the pornography industry.

We are amazed that Bill Dwyer testified under oath that he resigned from the ACLU many years ago (Committee testimony of September 11, p. 91). The record clearly shows that Mr. Dwyer was an active member of the state ACLU from at least 1960 on, and that he is plainly identified in a 1984 state newsletter of that organization as a current long-time member.

Secondly, he failed to provide any substantive legal analysis to justify the opinion he rendered on the legal status of Show Me!. Testifying under oath, he attempted to convince the committee that he spoke only in "probabilities" (September 11 testimony, pp. 52, 93), yet his statement on the record is a virtual absolute ("The courts would clearly hold that this book is serious ..."). Moreover, he makes no attempt at all to clarify the confusion created by Senator Leahy when he points to four unsuccessful attempts to find Show Me! obscene, as if these cases had the slightest relevance to its status under child pornography laws (pp. 46, 56).

Finally, William Dwyer states persuasively that Show Me! "had never been tested under child pornography statutes, and to the best of my knowledge, to this day, it still has not been..." (p. 94), and "To the best of my knowledge,

there has been no court test yet in the United States of this book under the child pornography statutes" (p. 44).

This is nothing but a bold attempt by Mr. Dwyer to conceal from the Committee the existence of such a case "in the United States" -- in fact, a short ferry ride from his home in Seattle. This case, State of Washington v. Hugh Jefferson Marshall, spanned the period from 1984 to 1986. Marshall is the very case which Bill Dwyer says over and over that he seeks: a test of the legality of Show Me! under child pornography law. Unfortunately for him, the outcome flatly contradicts his confident prediction to the library board.

The Marshall case dealt with multiple charges of simple possesion of child pornography. After his client was convicted on 62 counts of possession of child pornography -- the 62nd being Show Me! -- the defense attorney sought to have the child pornography law declared unconstitutional. Not only that, he expressly challenged the state court of appeals to rule on the legal status of Show Me! in light of the recent public controversy (exhibit 42). The appeals court responded to the challenge by affirming the conviction from the lower court -- and the illegal nature of all the material offered as evidence, including Show Me! (exhibit 43).

That Mr. Dwyer could possibly have overlooked the existence of this case, considering that it was reported in one of the major newspapers in the state (exhibit 44), that it occurred in the neighboring county to Seattle, that it had advanced to the level of the state Supreme Court, and most of all that it concerned the very issue which has haunted his attempts to gain a judgeship -- simply surpasses belief.

In conclusion, William Dwyer has failed to provide the Senate Committee on the Judiciary with enough truthful information about himself, his associations, his views, and his respect for facts, to justify a lifetime appointment to the federal court. Washington Together Against Pornography respectfully requests the Committee to wait for a candidate in whom we in Washington State can place our trust and confidence.

Adam Walsh Child Resource Center
Of Greater Washington
Formerly MISSING Children of Greater Washington

September 10, 1987

Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
Washington, D. C. 20510-6275

COPY.

Local Advisory Board

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The CIPA Companies, Inc.

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Donald A. Hampson, Jr.
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Vice President
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Dennis Baker
Child Advocate

James C. Brandon
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WTTG-Channel 5

Dr. Robert F. Dyer
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Department of Business Administration

Vickie Katz
U.S. Department of Justice

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Radio Personality
WMAL-AM/FM

Joseph J. Palombi, Ph.D.
Family Counseling Centers
of Northern Virginia

John Tillman
University of the
District of Columbia
Early Education

Charlotte Williams
Youth Hostels

Barbara Wyatt
Wyatt Enterprises, Inc.

Executive Director
James H. Chandler

Dear Senator Biden:

I am writing in reference to your letter of September 4, 1987 regarding the hearings of the Senate Judiciary Committee of September 11, 1987.

The Adam Walsh Child Resource Center is a child advocacy organization. The mission of The Center is to improve the environment for children through education and the strengthening of laws that work to protect this most precious resource.

In some cases The Centers' input even if ideally appropriate, may be inadvisable as a matter of policy or unworkable as a matter of practice. This is the case regarding oral testimony by me during the hearings concerning the nomination of Mr. William L. Dwyer to be U. S. District Judge for the Western District of Washington. While conscious of other individuals and organizations interests in this matter, we would implore you to consider the following matter germane to the aforementioned hearings.

It was brought to the attention of this writer in July of this year that Mr. Dwyer was called upon to render a "legal opinion" concerning the book Show Me! The opinion was given to the Seattle Public Library Board and resulted in the decision to continue to promote, distribute and generally make available to the public, the book Show Me!

The book Show Me! is a picture guide-book using prepubescent and teenage children performing various sexual activities for the purpose of instructing children as to the mechanics of these activities. The content of the book clearly violates current federal and state laws regulating such 'child pornography'. We reach this conclusion based on the Supreme Court's unanimous decision in New York v. Ferber (1982) 102 S.Ct. 3348, and subsequent rulings such as U. S. v. Langford (1982) C.A. Wis. 688 F.2d. 1088 and U. S. v. Nemuras (1983)

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ADAM WALSH CHILD RESOURCE CENTER

D.C. Md. 567 F.Supp. 87. These decisions clearly support the intent of 18 U.S.C.A. 2251 - 2256. This federal legislation and history provides that no exception is given to any depiction of children in sexually explicit situations. This goes so far as to remove this book from protection under the First Amendment, and further provides that no work depicting live photographic reproductions of children as subjects of pornographic material may have protection under the exceptions listed within said statutes.

It is distressing to read the following finding by Mr. Dwyer as stated by the Seattle Public Library Board on September 26, 1986:

> "The Board conducted a thorough review.....assisted by City Attorney Doug Jewwett as well as Mr. Dwyer. The main reasons for our conclusion....
>
> - The text of the book is serious and educational and clearly is not within the scope of any law prohibiting expression;
>
> - It is doubtful that any of the photographs in the book would be found to be within the catagories prohibited by the state and federal child pornography statute;
>
> - Both state and federal statutes are accompanied by disclaimers of any intent that they would apply to legitimate works of sex education. In the state statute the disclaimer appears in the law itself, and in the federal statute the disclaimer appears in a statement by the U. S. Department of Justice which is part of the legislative history; and
>
> - Even if the statutes were otherwise, the book would have a substatial claim to protection under the freedom of speech guaranty of the First Amendment of the U. S. Constitution."

We not only disagree with the above statement, we do not see where the opinion was constructed from the same laws and history we reviewed. An example: the above four points adhere to the assumption that child pronography must meet the criteria of being judged obscene through the use of the 'Miller' test [Miller v. California (1973) 413 U. S. 15], yet reading from the Opinion of the Court in New York v. Ferber we find

ADAM WALSH CHILD RESOURCE CENTER

the following: "It is irrelevant to the child [who has been abused] whether or not the material... has a literary, artistic, political or social value." ..... We therefore cannot conclude that the 'Miller' standard is a satisfactory solution to the child pornography problem."

Persuant to this information it should be stated that the real issue is the dangerous fact that as a result of the information provided to the Library Board, the book remains available for public consumption.

The position of the Adam Walsh Center is that the book Show Me! be removed from all public libraries and institutions of learning. The most compelling evidence to justify this position is the book itself. This evidence is no longer available as the result of the decision by the publisher, St. Martin's Press, Inc. of New York, to cease publication on August 16, 1982, as a result of the Ferber decision.

Our position is supported by such experts in the area of child pornography as Supervisory Special Agent Kenneth V. Lanning, F.B.I. Academy, Quanitco, Virginia and former Executive Director of the National Center for Missing and Exploited Children, Jay Howell, Esq. As stated by them, Show Me! is "the pedophile's bible." They report it is often found in the collections of arrested pedophiles and is used by molesters to "educate" and seduce children. It is the single most commonly found item of evidence used in the conviction of child molesters.

I am sure you will concur with our position in this matter, and I trust you will use this imformation to benefit the children entrusted to your care.

Thank you for your consideration in this matter.

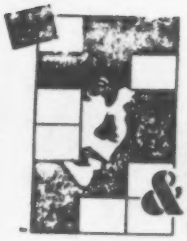
Andrea
Good Luck
Jim

Sincerely,

COPY

James N. Chandler
Executive Director

cc: Senator Strom Thurmond
Mr. John Walsh
Mr. Denny Abbott
Mr. Ken Lanning
Mr. Jay Howell
Ms. Andrea Vangor, Ph.D.



NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

1835 K Street, N.W. • Suite 700 • Washington, D.C. 20006
202/634-9821

AUGUST 28, 1987

Ms. Andrea K. Vangor, Ph.D.
Executive Director
Washington Together Against Pornography
1011 Boren Avenue, #148
Seattle, WA 98104

Dear Dr. Vangor:

Per your letter of August 19th in reference to the book Show Me!, the following information may be of some assistance. Prior to my coming to the National Center as its Deputy Director, I was the Program Manager for the Louisville-Jefferson County KY Exploited & Missing Child Unit. This police/-social work Team was the first in the nation created to provide detection, investigation, and protective services on behalf of youth as well as apprehension and prosecutory services against adults criminally exploiting children through prostitution, pornography, or child-sex-rings in the Louisville SMSA.

From July, 1980, through February, 1984, the police/social work Team of the E.M.C.U. investigated about 1,400 cases of children suspected of being victims of sexual exploitation. 54% (756) of the children were found to be victims and an additional 31% (431) of the children were considered probable victims although lacking sufficient proof for court proceedings.

During this time period, the E.M.C.U. prosecuted hundreds of adults for various crimes involving the sexual exploitation of children. Over 40 major cases involved the successful prosecution of adults involved with over 12 children each. In one particular case, investigators thought there were up to 320 child victims. At the time of arrest of and/or service of search warrants, ALL of these adult predators were found with various forms of adult pornography and in most cases child nudes and/or child pornography. Over 4 years, the E.M.C.U. Team learned to expect to always find adult pornography as such was used by the adult offenders for their own sexual arousal, for self validation of their own sexual deviation(s), for extortion of child victims or other adults, and for the deliberate and planned lowering of inhibitions of child victims.

The book Show Me! was one item which was frequently found in the searches of child molesters' property, generally was used in the seduction of the children, and was seen as "highly erotic" by those pedophiles. Any behavior on the part of criminals that appears consistently and universally must be recognized as having high predictive and preventative value for law enforcement and legislation.

Clearly, one should expect to find Show Me! in the arsenal of tools used by preferential child molesters to erode "family, school, and church values" about age-appropriate human sexuality in preying on children. Law enforcement nationally now carefully and deliberately searches for Show Me! type publications in child molestation investigations.

Please let me know if I can provide any further clarification or be of any further assistance.

Cordially,

John B. Rabun, Jr., ACSW
Deputy Director, Technical Assistance

c.c.: Ken Lanning
Rob Showers

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215-898-8281

September 21, 1987

Senator Joseph Biden
Chairman
Senate Judiciary Committee
U.S. Senate
Washington, D.C. 20510-0802

Dear Senator Biden:

I am writing to request the opportunity to testify at the hearings regarding the nomination of William Dwyer to the Western Washington District Court.

I am a registered nurse and a professor of nursing at the University of Pennsylvania. My research focus since 1972 has been in the area of sexual victimization. I was principal investigator of two federal grants on the subject of sexually victimized children: The Use of Children in Pornography (Natinoal Center on Child Abuse and Neglect) and the Possible Linkages Between Child Sexual Abuse, Juvenile Delinquency, and Criminal Behavior (Office of Juvenile Justice and Delinquency Prevention).

I have learned that Mr. Dwyer was hired to advise the Seattle Public Library Board about the legal status of the book Show Me when child advocates were trying to get their local prosecutors to take action against the book. It is my understanding that Mr. Dwyer claimed that "the courts would clearly hold that the book is serious in its purpose and that it has real, legitimate, substantial value as an educational resource".

I would like to testify that, based on my research, the book Show Me is pornographic exploitation of children and that there is no educational value in such literature. The book shows pictures of sexual acts between children with no discussion of social or moral responsibility noted in the text. Such explicit sexual pictures show children trying to make sexual decisions and presuming behaviors about another child before that child may be ready to make such a decision. Children viewing such material are given full sanction to then proceed to act and perpetuate unwanted sexual acts with other children. We know this behavior occurs since the book is frequently found in the collections pedophiles and child victims have told us that the book was used to demonstrate what to do to other people's sexual organs.

The statements made by Mr. Dwyer suggest he will represent a particular viewpoint on childhood sexuality. Our research indicates that showing active sex between children is not helpful and that peer sexual relationships are not as harmless as some would try to make us believe. Mr. Dwyer is drawing conclusions from a unilateral position regarding children making sexual decisions adn as such does not suggest a valid legal opinion.

Sincerely,

Ann W. Burgess

Ann W. Burgess, DNSc
van Ameringen Professor of Psychiatric
Mental Health Nursing

AWB:cg

Richard P. "Toby" Tyler
P.O. Box 1393
San Bernardino, CA 92402-1393

October 19, 1987

Senator Strom Thurmond
Senate Judiciary Committee
Washington, D.C. 20510

Attention: Frank Klonoski

Re: Judicial Nominee: William Dwyer

Dear Senator Thurmond,

Due to a schedule conflict, I am unable to attend the hearings Thursday to offer personal testimony.

~~I am a supervisor in a specialized law enforcement child abuse investigative unit~~. I have published articles in several international journals on the subject of child pornography. I have also found Show Me to be a major factor in many cases of child sexual victimization. I am enclosing a "Biographical Review" which details (at length) my experience in this field.

I am also enclosing an article (English version) that I prepared for Surete, a French language publication published in Montreal and circulated internationally.

~~The nominee's publicly stated position on the book "Show Me" causes me great concern.~~ Child pornography has been a major focus of the Senate since 1977. The legislation that has evolved has had a significant impact on child pornography production worldwide.

~~Mr. Dwyer's failure to recognize Show Me as child pornography should cause the members of the Senate Judiciary Committee great concern as well.~~

Show Me is child pornography. The book has been used by innumerable child molesters in their seduction efforts with children to normalize the sought after sexual interaction with the children they have victimized.

Thank you for the opportunity to communicate my concerns to the Committee.

Sincerely,

Richard P. "Toby" Tyler

Copy: Andrew Rainier,
Investigative Counsel

Statement of Richard P. "Toby" Tyler regarding the nomination of William Dwyer as Judge For United States District Court.

My comments will focus on Mr. Dwyer's publicly stated opinion of the child pornography publication: "Show Me."

The book "SHOW ME," published by St. Martin's Press (English language edition - copyright 1975), claims, on the title page, to be, "A Picture Book of Sex for Children and Parents."

Show Me is a book which I know well. I have been involved in various capacities (affiant, co-affiant, investigator, consultant or expert witness) in at least fifty (50) felony child sexual abuse/exploitation cases where Show Me was used by the offender to facilitate the seduction of the child or children.

This is not to suggest that a child is exposed to Show Me and immediately surrenders their body to a child molester. It is to suggest that Show Me is used to incite a child's curiosity about sex, to create a sense of wonder and awe at the activities depicted therein and to convince the child that the depicted activities are not only normal - they are desirable. The adult who is exhibiting Show Me to a child is often an adult whose objective is the seduction of the child.

The child molester who uses Show Me is not seeking to satisfy the child's curiosity - their objective is to incite the child's curiosity, to convince the child that sexual interaction is fun, normal and acceptable. Show Me does an excellent job of facilitating this objective.

Mr. Dwyer reportedly stated, at a public meeting of the Seattle Library Board, that "The courts would clearly hold that

this book is serious in its purpose and that it has real, legitimate, substantial value as an educational resource. I don't believe there is a sufficient legal basis, under either the federal law or state statute, to justify removing the book from the collection of the library."

I agree with isolated parts of that statement, and, obviously, I disagree with the substantive message of the statement. The claim that "the courts would clearly hold that this book is serious in its purpose and that it has real, legitimate, substantial value as an educational resource" suggests that Mr. Dwyer, as a member of a court, would issue such a finding. However, the appellate court in the State Of Washington (State v. Hugh Jefferson Marshall 10209-9-II) has found that Show Me violates Washington's statute prohibiting possession of child pornography (while the Stanley v Georgia argument relating to personal possession of child pornography is often argued - the purpose of this document is not to address that issue [although the Washington Appellate Court did so in their opinion]).

I agree that Show Me has educational value, especially in view of the fact that so many victims have revealed that Show Me was their initial "educational" introduction to the concept of "sex is fun - sex is okay." This introduction, unfortunately, was presented by an adult who exploited the child.

The child molester who uses Show Me as a means of introducing a child to sex is seeking to encourage the child to participate in the activities graphically depicted in Show Me.

Their objective is to create "a normalization factor to allay a child's fears concerning unnatural child-adults relations'."

Show Me clearly states that sexual interaction is fun and feels good, and even discusses sexual interaction as a means of expressing love -a concept that most healthy adults agree with. Unfortunately, Show Me does not realistically address the issue of child sexual abuse the real world. Show Me refers to child sexual abuse on page 158, where Show Me encourages parents to warn children not to accept invitations from strangers; that they [the strangers] force children to engage in sex play and that "these people get nasty and beat them up and don't bring them back to their parents" if the children fail to cooperate.

It is well known that most sexually abused children (80% to 90%) are molested by persons known and trusted by them and/or their families.

The message contained in Show Me is clear: Sexual interaction with someone you care for, with someone you want to make happy - is fun, it feels good and is loving. From the perspective of a child molester, no message could be more desirable and more valuable.

' See People v. Gill, California 5th Circuit Court Of Appeal, reported October 12, 1987 in the Daily Journal [People v. Gill 87 D.A.R. 7450]. The court recognized the "normalization" use of harmful matter in child sexual abuse.
The cited case did not refer to Show Me, however, Show Me features children and the message in Show Me is directed to children which arguably makes Show Me more valuable as a "normalization" tool.

FAMILIES & FRIENDS OF MISSING PERSONS & VIOLENT CRIME VICTIMS
P.O. Box 27529 Seattle, Washington 98125
(206) 362-1081/1-800-346-7555 (Washington State Only)

October 16, 1987

The Honorable Joseph R. Biden, Jr., Chairman
and Members
Senate Committee on the Judiciary
U. S. Senate
Washington, D. C. 20510-0802

Dear Senators:

Families & Friends of Missing Persons & Violent Crime Victims opposes the confirmation of William L. Dwyer to the Western Washington District Court.

His past record and activities have demonstrated his views toward allowing and promoting child pornography.

We are the grass roots victim's rights group in the State of Washington and, as such, represent a large number of people who have a strong interest in laws against child pornography. These problems are particularly severe in the Seattle area, which is a notorious capitol of child prostitution and child pornography.

We want to see laws passed, enforced and upheld in court by judges who have some grasp of the issue. We work hands on with numerous cases of child exploitation helping them to pick up the pieces of their lives and to somehow become useful productive persons in society again. It would be doing a great disservice to the people of Washington State if you were to confirm William Dwyer.

Sincerely,

Donald P. Hendrickson

Donald P. Hendrickson, President
Board of Directors

cc: The Honorable Strom Thurmond

WISH OF KIRKLAND
Box 2543
Kirkland, WA
98033-0710

October 20, 1987

Honorable Joseph R. Biden, Chair
Members
Committee on the Judiciary
U.S. Senate
Washington D.C. , 20510

Dear Senator Biden;

Thank you for entering this letter in your committees record of testimony about Wm. Dwyer for the Western Washington District Court.

As Director of this personally funded office, I have spent the last four years setting up parent support groups and teaching parents how to control their home environment in spite of our run-amuk-do-your- own- thing society. Like David Crosby, I found that love wasn't enough and through a personal agony fought my battle for my teens. Our family used this parenting program and now I use it to establish parent groups all around the State of Washington. (My children are adults now and living responsibly.)

In the capacity of Director of this office I have served on numerous committees concerned with the problems of youth in our state. My involvement with Washington Parents Coalition (a coalition of groups struggling with teen issues) goes back to its inception. Parents-In-Arms was a member of this coalition. In fact, WPC used Parents-In-Arms agenda to lobby and promote what they saw as the solution to teen problems in our state. (i.e., curfews, revision of the Juvenile Code and so forth) I personally lobbied and wrote testimony on behalf of this agenda. Mr Dwyer was never a part of this effort in any way that I knew; quite to the contrary. The ACLU was opposed to WPC's proposals at every step and indeed, had been a large part of the problem all along as Mr. Crosby asserts in his September 11 testimony. Mr. Dwyers long standing affiliation with the ACLU colors him responsible. The only time I ever heard Mr Dwyers name mentioned was when Linda Zeitner, President of WPC and wife of Mike Zeitner expressed fear that Mr. Freeman formerly of the Monastary would jointly sue Zeitners and Dwyer. (WPC and PIA have since disbanded)

Sad to say, the appearance of the claim by Mr.Crosby that sweeping improvements in the Seattle teen scene were brought about by the closure of the Monastary and Mr.Dwyers influence are overblown and transitory. The very fact that it took someone like Mr. Dwyer to

use personal contacts to get laws enforced in Seattle when it was well known that violations and victimization of children abound in our city does not speak well of the system. We still have no curfew, nothing has changed and new groups of citizens are waking to find ever new waves of children caught up in the street scene. And, of course, the ACLU still fights parental authority over youths at every opportunity.

When I learned that the Seattle Library Board had been advised by Mr Dwyer that it was ok to keep the book "Show Me" in the library I was horrified as it is known that this book is used often in child sexual molestation. Subsequent to the Library Boards vote I ordered the book "Show-Me" through my own King Co. Branch (Seattle is in King Co.) at Kirkland proving it is readily accessible to anyone. Because each library has a copier it would have been a simple matter to copy all or portions of this book had I been so inclined.

In sum, the committee is very much misled if they take the testimony of Mr. Dwyers involvement in the Monastary closure as evidence of his true values. How his values would be expressed in court decisions in the future, I believe, would be much more powerfully influenced by his long standing association and perpetration of ACLU goals. Evidence of current legal opinions he has given regarding such things as "Show Me" speak for themselves.

Sincerely,

A. Joy Michalak

"A.J." A. Joy Michalak, Director

dd: Senator Thurmond
Enclosures: articles of my work and local street scenes in Seattle.

This family program aims to make big wishes come true

By Candi Dufek
Staff reporter

How often do parents find themselves saying, "I wish I could communicate with my teenager" or "I wish I understood my teenager better."

Well, perhaps this is one instance when a "wish" can make the difference in better understanding between parents and adolescents.

Kirkland is the new home to the Washington Institute for Self Help (WISH), a program in which parents and teens are taught how to cope with each other.

Under the direction of A. J. Michalak, the all-volunteer program of 12 two-hour sessions presents parents and teens with a successful program developed by Seattle's Archie Pendleton 15 years ago.

Says Michalak, "The copyrighted program was developed by incorporating the agony and answers of hundreds of parents who have participated in the program over the years."

Run by "parents who have been there," not therapists or counselors, WISH runs the gamut in terms of the kinds of problems that are encountered.

"We see parents with kids who have been through juvenile hall to families where the kids are making it in the system but still drive their folks crazy," says Michalak.

With a volunteer staff of 15, WISH has put 425 people from Seattle to North Bend through the program in the past two years.

There is a 50-50 split of parents and kids. Both groups are taught the same basic philosophy but in separate rooms by different teachers. The cornerstone of the program is home exercises, according to Michalak.

Receiving no federal grants or outside agency monies of any kind, WISH is self-supporting

UNIQUENESS
WORKS!
According to Michalak parent burn out is a big contributor to family problems. "If the child acts and the parent reacts, the child is in control. We teach the parent to have the moves and not to be a sitting duck."

Michalak also sees WISH as a good preventative program for parents of pre-teens.

"We teach concepts that work that go beyond theory. We stress skills and strategies for parents to utilize so they have their own plan ahead of time so that parents aren't involved in crisis oriented child rearing," says Michalak.

As Of: Oct 85 our new office does not hold classes. We will refer you to a local WISH class or WISH materials for rent/purchase. Call us! We want to help!

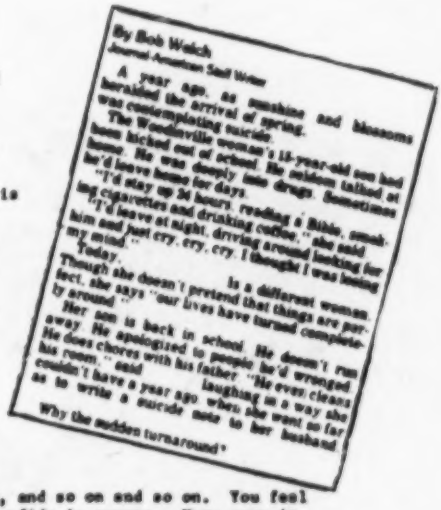
KIRKLAND COURIER-REVIEW, Wednesday, February 27, 1985

OVER

WISH OF KIRKLAND
FOR FAMILY SURVIVAL
P.O. BOX 2543
KIRKLAND, WA 98033-0710
PHONE (206) 827-9005

TESTIMONIES

" I know the smug feeling of thinking "It won't happen to our family. We've done a good job with our children." It's true that we did do the best we knew how. The problem was that we didn't have the kind of training that is necessary to deal with the juvenile problems that no family is immune to. It doesn't seem to matter if you are rich or poor, married or divorced, religious or not, there are no guarantees.



By Bob Welch
Journal American Staff Writer

A year ago, as sunshine and blossoms heralded the arrival of spring, was contemplating suicide.

The Woodinville woman's 13-year-old son had been kicked out of school. He seldom talked at home. He was deeply into drugs. Sometimes he'd leave home for days.

"I'd stay up 24 hours reading a Bible, smoking cigarettes and drinking coffee," she said. him and just cry, cry, cry. I thought I was losing my mind."

Today,

Though she doesn't pretend that things are perfect, she says "our lives have turned completely around."

Her son is back in school. He doesn't run away. He apologized to people he'd wronged. He does chores with his father. "He even cleans his room," said laughing in a way she couldn't have a year ago when she went so far as to write a suicide note to her husband.

Why the sudden turnaround?

To know the sick feeling that comes over you when a police officer shows up at your door, you smell alcohol on your child's breath, you find drug paraphenalia in your home, you realize that your child has run away, and so on and so on. You feel isolated. You are scared, but don't want to confide in anyone. Very soon it becomes something you can no longer hide because the school becomes aware, the law becomes involved, or you just know deep in your heart that you can't ignore it any longer or you run the risk of losing your child in one way or another. "

strategy techniques with parent to parent feedback

" PARENT BURNOUT. A reality with a name. Many of us are suffering from it but don't even know it.

After six stormy years that began in seventh grade our oldest daughter had literally kept the whole family in a constant turmoil. She acted and we reacted; this left her in control. Without realizing it we moved into crisis-oriented childrearing where before a semblance of order had existed. All along the way she was showing many signs of responsibility and we kept hoping maturity would eventually win over. I daily thought we'd "turned the corner" and the problem was behind us. When our second daughter began a similar pattern of disruptive and dishonorable behavior I could no longer mark it up to the oldest ones personality - we had to find an answer! We could not go on like this!

I was brought in touch with a program called the WISH program. After skeptically and thoroughly checking it out I went very reluctantly.

Thank God I did. "

Christian Church

Senior Pastor

July 23, 1985

Mr. and Mrs. R. Michalak
WISH Program
P.O. Box 2543
Kirkland, WA 98033

Dear Bob and A.J.:

I want to thank you for bringing the WISH Program to our church! I have felt the need of practical strategies for parents for some time, and the WISH Program, with its Parents Survival Class, seems to be an excellent tool for helping parents. The following comments were received from the evaluation forms we asked for at the end of the 12 sessions:

- WHAT HAVE YOU GAINED FROM THIS COURSE?

  "A great deal of knowledge and understanding of why teenagers behave the way they do--and that we can have control in our home even when they go through the phases."

  "A new perspective on relating to our children. I listen to them more and spend time just observing them & getting to know them"

  "Self confidence in parenting skills - confidence in handling crisis and assurance that I am doing an okay job! Also gained information on what I might confront in the future..."

  "The importance of home rules and consequences in raising children."

- HAS THIS COURSE GIVEN YOU INFORMATION THAT WILL HELP IN DEALING WITH YOUR CHILDREN?

  "Yes - the tools are already working!"

  "Yes. I have a structured way to discipline my kids with love and little guilt. I've regained my home."

  "Yes, I know now that I don't have to tolerate unacceptable behavior because they're teenagers - there is a way to deal with the phases."

  "Yes. The use of 'community service' or work time as a consequence, rather than restrictions, has been successful."

  "Practical ideas for dealing with teens. Also I've appreciated just being with a supportive group of Christian parents to share our joys and burdens."

9K

Washington Parents Coalition

Truancy-HB 1339
Curfew-HB 1498
Minor Acc.-SB 4316

11707 - 132nd Ave. Ct. E.
Puyallup, Wa. 98374
(206) 848-6092

The Washington Parents Coalition, a newly-formed alliance of caring parents and a variety of organizations concerned with the welfare of our children, convened in October 1985 to combine forces to lobby for changes in the Washington State Juvenile Justice Code.

The coalition has identified several issues as targets for legislative action in 1986, among them: Reinstituting legal sanctions against child victimization and contributing to the delinquency of minors; the control of truants, runaways and other status offenders; harsher penalties for those who harbor runaways without consent; institution of a state-wide curfew for juveniles and changes in laws relating to the possession and use of drugs and alcohol by minors.

The W.P.C. feels that an effective, well-written curfew ordinance would serve as a preventative tool in the hands of city police, and used judiciously, would help eliminate problems with juvenile crime and mischief, protect minors from delinquency and harm beyond their control. It will also reinforce parental authority and help teenagers make safe and sane decisions when peer pressure is applied.

For this reason, we have chosen to support a curfew bill which will be sponsored in the 1986 legislative session by Representative Ernest Crane. The bill is responsibly written. If passed, it will not bring sanctions against those under 16 who have genuine, responsible reasons for being out beyond 12 p.m. It exempts all youth returning home from a school, political or religious activity; traveling to or from work; or if they are in front of their own home or a neighbors home. It also exempts all youth who are accompanied by a parent, a legal guardian or someone 21 or older who is authorized by the parent to accompany the youth.

This has been written with the concept that the child will be held accountable for his/her actions, not just the parent. Violation by a teenager could result in a fine or 20 hours of community service. Adults who abet curfew violators would be subject to a $500 fine and up to 90 days in jail.

We know that our communities must get a hold on their youth activities, such as cruising, drinking parties and consequent drunk driving and those children who roam the streets between 12 p.m. and 5 a.m. with impunity. Parents are helpless to set any reasonable curfew for their children when the Law won't! This situation leads to unnecessary friction and often is the foundation for parent/child relationships ending in a runaway situation.

The other bill that we are supporting this session is designed to protect children from exploitation by pornographers and molesters. It is a minor access/public display bill, which requires sexually explicit materials be kept out of sight and reach of persons under 18. In addition, we are trying to make our state's current child pornography law stricter, meeting the higher standards of the federal law.

WE NEED YOUR HELP IN BOTH OF THESE!! Please, within the next week of receiving this letter...NOTIFY YOUR STATE LEGISLATOR THAT YOU SUPPORT BOTH OF THESE ISSUES!! Without this help, we will not be able to help you help your children!! You can write your legislator in care of: The Secretary of the Senate Office, Legislative Building, Olympia, Wa. 98504 or The Chief Clerks Office, Legislative Building, Olympia, Wa. 98504. Just state that you support these bills and want to see your legislator do likewise. You may also contact your legislator by telephone. Thank you!

During the legislative session citizens may obtain information on the status of bills and leave messages for their legislators by calling the toll-free number, 1-800-562-6000.

PARENTS IN ARMS
Puget Sound Area
CONQUEST CENTER
Edmonds
CONCERNED PARENTS OF SEATTLE
Seattle

WASHINGTON TOGETHER AGAINST PORNOGRAPHY
Mercer Island
SHORELINE UNITED NEIGHBORS
Seattle

OPERATION LOOKOUT
Mount Lake Terrace
H.I.S.H. PROJECT
Kirkland
PARENTS COMMUNITY ACTION GROUPS FROM
Olympia, Federal Way and Gig Harbour

WASHINGTON PARENTS' COALITION

MISSION STATEMENT

More and more, children are out of control, and good parents cannot perform their proper job of governing minors within in the family.

The Washington Parents' Coalition, an association of agencies and organizations, was created to defend the legitimate rights of parents in Washington State to make decisions about their children's lives. The family is an irreplaceable unit of society, and so the rights of parents are, likewise, irreplaceable. Today, however, much of our societal back-up system, i.e., schools, churches, and state authority... which previously functioned to support parental authority, is ineffectual and restricted by both diversity and legislation.

We believe a parent's rights include the right to discipline the children in the household. We agree that the line which divides legitimate parental discipline from intolerable abuse must always be drawn well short of any sort of abuse of a child. We do not dispute that violence toward children is inexcusable, nor that many parents resort to inappropriate punishments out of fear and frustration caused by lack of support from state and local government to help them enforce reasonable structure in the home. Needed are specific tools to help parents develop alternate, effective disciplinary techniques when a child begins to act out due to rebellion or dysfunctional behavior. This does not mean, however, that parents' rights in general must be transferred to the state, to the child, or left to be usurped by those who would exploit minors for their own gain or gratification. Such is the state of affairs in Washington State.

Parents also have the right to ask for adequate support from appropriate authorities to back them up. United States Supreme Court Justice Brennen stated.."parents and others..who have this primary responsibility for children's well-being are entitled to the support of laws designed to discharge that responsibility". Ginsberg v. New York, 390 US 629, 639 (1968).

As the societal back-up system has failed to support and help the family, social chaos has been the result. Restoration of societal and legislative back-up systems for the family is a primary objective of the Washington Parents' Coalition. Accordingly, we see as our major tasks.....

* to promote revision of juvenile laws that dilute parental authority;
* to promote understanding and enforcement of laws which strengthen the family unit;
* to define and advocate reasonable standards of behavior for minors;
* to support enactment of stricter laws to prevent exploitation of minors.

We recognize the children of this state to be our most precious resource. The loss of any child to a system that is harmful and ineffectual is a tragic and unnecessary evil. Washington Parents' Coalition pledges its support to each person, whether legislator, social worker, or law enforcement agent, who actively recognizes and works for the health and welfare of the whole family unit.

We call on Washington State to bring our support system back into a balance that will give our children, and each of us, the foundation of emotional and physical security that is needed to form strong, caring family units and communities!

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 14 1987

Ms. Andrea K. Vangor
Executive Director
Washington Together Against Pornography
1011 Boren Avenue #148
Seattle, Washington 98104

Dear Ms. Vangor:

Thank you for your letter of August 17, 1987, and I appreciate the opportunity to address your concerns. The availability and use of the book Show Me! has created concern throughout the nation. Investigators have reported finding this publication with great frequency as they conducted searches of the homes of child molesters or child pornography collectors.

The role of the federal government is limited in this matter by jurisdictional considerations. While the book is arguably child pornography, unless it is sent through the mails or transported in interstate or foreign commerce, the federal government has no jurisdiction to act. The material may, however, be subject to prosecution under state laws prohibiting the distribution of such material.

Thank you again for your letter and I appreciate your concern in this matter.

Sincerely,

H. Robert Showers
Executive Director
National Obscenity Enforcement Unit

LOS ANGELES POLICE DEPARTMENT

DARYL F. GATES
Chief of Police

TOM BRADLEY
Mayor

P. O. Box 30158
Los Angeles, Calif. 90030
Telephone:
(213)- 485-2801
Ref #: 8.2.6

November 5, 1986

Mr. Darold Champaign
RD 2 Delivery #103
Elmira, New York 14901

Dear Mr. Champaign:

Pursuant to your telephone conversation with Detective Ralph Bennett of the Los Angeles Police Department on November 3, 1986 the following information is provided in regard to the book entitled "Show Me!" The front cover depicts two young children in the nude and is captioned, "A picture book of sex for children and parents photography and captions by Will McBride, explanatory text by Dr. Helga Fleischhauer-Hardt." It was published by St. Martin's Press, 175 Fifth Avenue, New York 10010. It is unknown if the book is still in publication.

In the ten year history of Juvenile Division's Sexually Exploited Child Unit, detectives have frequently seized copies of "Show Me" during investigations pertaining to sex crimes against children. In fact, this book has probably been found in this type of investigation more often than any other single publication. It is common knowledge among detectives that pedophiles, those having a sexual interest in children, have had a particular penchant for "Show Me" since its first United States publication in the mid-1970's.

The propriety of "Show Me" has always been a topic of dispute. However, investigations have clearly shown that this book, in the wrong hands, can be a tool for crime. Indeed, it has been a powerful tool for the pedophile to use in lowering a child's inhibitions so that a sex crime against that child could be accomplished. This is the very reason that the book has been seized in so many investigations of sex crimes against children.

Mr. Darold Champaign
Page two
8.2.6

I hope this information will be helpful. If Detective Bennett may be of further service please feel free to call him at telephone number (213) 485-2883.

Very truly yours,

DARYL F. GATES
Chief of Police

D. CLAYTON MAYES, Captain
Commanding Officer
Juvenile Division

SEXUAL ASSAULT CENTER

Position on Show Me

The Sexual Assault Center takes the position that Show Me should not be available through the Seattle Public Library. It is child pornography and has potentially negative effects on both children and adults who read it.

Child pornography is the filmed or photographic representation of children engaged in sexually explicit conduct (RCW 9.68A.011). Laws against child pornography protect the children who are sexually abused or exploited in the production of the materials. The United States Supreme Court has ruled that child pornography need not meet the legal criteria for obscenity as is required to restrict pornography which depicts adults engaged in sexually explicit conduct (NYV. Ferber US, 73 LEd 2d 1113, 1025 ct). The decision reflected the belief that there is a compelling societal interest in protecting the physical and psychological well being of the children who are used in the process of making pornography. As was noted in the decision it matters little in terms of the child's experience whether the pictures have a serious "literary, artistic, political or scientific value." And there is continuing damage because of the permanent record over which the child has no control. S/he is, in effect revictimized on each occasion that the pictures are viewed.

Show Me is child pornography although it may not be legally obscene. It contains pictures of children in sexually explicit activity. It differs from most child pornography which portrays children in sexual ways for the specific purpose of sexually stimulating the reader. This is clearly not the intention of the book. The author appears to genuinely hold certain positive beliefs about child sexuality which she is advocating through a narrative accompanied by photographs.

Yet the children's actual experience is not altered by the motives of the author. The child models could not have given truly informed consent to their participation. It is widely understood that children are different from adults in their sexual knowledge and experience and that they are not in a position to disregard the requests of adult authority figures. Laws prohibiting adult child sexual contact are based on this premise. It was adult parents who gave consent to the adult photographer to pose their children in sexually explicit ways and to instruct them to engage in sexual intercourse for the camera. Many of the children are obviously too young to understand and even if some of the older children did understand and agree at the time, they may have changed their minds since then. Few could have realized the ramifications of international distribution of pictures of their nude bodies for years to come.

Although not necessary for legally defining them as pornography, the pictures in Show Me must be considered in the context of the narrative. The text promotes the view that children are sexual and should be encouraged in the expression of their sexuality. It strongly implies that it is harmful to restrict or discourage such activities. Those who disapprove are portrayed as narrow minded. It is true that many decent and thoughtful people believe that repressive attitudes toward sexuality are not healthy. Yet current social attitudes about child sexuality do not endorse sexual behavior in children. Such innocuous behavior as occasional masturbation or exploratory sexual activities among young children are barely tolerated by society at large. Virtually no one would encourage young adolescents to be sexually active. In fact early sexual activity is associated with physical and psychological problems for teenagers. Many religions explicitly condemn all of these behaviors.

The book is about children and sex but there is no effort to establish a value system which distinguishes appropriate from inappropriate sexual situations or relationships. It promotes the traditional psychoanalytic perspective that children are the source of sexual drives; a view which has been challenged in light of our recent awareness of the massive extent of adult sexual interest in children. The book repeatedly associates sexuality with situations which children do not ordinarily find sexual; breast feeding, playing with a parent or family togetherness. There is a uniformly positive view of child sexuality presented which equates many divergent forms of behavior and social interaction. Such attitudes can be dangerous to children.

The stated purpose of the book is educational but is it in the best interests of children to casually encourage them in beliefs and practices which contravene social custom? Children who acted as the book recommends would be ostracized and rejected by both peers and other adults. Sexually abused children often do act in sexualized ways and pay dearly for this because they are invariably stigmatized further. Even if the parent carefully explains that these views are not universally shared, the child is in jeopardy. Because of a heightened interest and awareness of sexual feelings for which there is no socially accepted outlet, the child is placed in a position of physical and psychological conflict. In any event it is not necessary for children to see actual photographs of sexual behavior as part of their education. It would be voyeuristic if not illegal to have them watch people in real life engaging in sexual activities. Children who are highly sexualized or who do not know how to discriminate sexual situations are also probably more vulnerable to sexual victimization.

The reality of sexual assault is completely ignored by the book. At least one in three girls and one in ten boys is sexually assaulted. In most cases it is by a person known or trusted by the child, or is a relative usually a parent. The offender most often disguises the sexual activity by persuading the child that it is normal, educational, or otherwise acceptable. These childhood experiences can lead to all kinds of physical and psychological problems for the victims.

Society has an interest and an obligation to work to prevent the sexual assault of its children. Everyone recognizes that there is no single cause or explanation of sexually abusive behavior. But there are two things all sex offenders have in common: a sexual interest in children and a set of beliefs which allows them to act on that interest. Show Me contributes to the development of both. Its essence is the message that children are sexual and it therefore strongly reinforces an association between children and sex. It also contains the most commonly used rationalizations of sex offenders: that children require explicit sexual education, that children want to have sex in the same sense as adults do and that sex is good for them.

It is true that individuals who are predisposed to commit sexual offenses can find reinforcement and justification for their deviance from many sources but Show Me provides the perfect vehicle. Many sex offenders actually use pornography to accomplish the children's cooperation with molestation by legitimizing the behaviors. Show Me is ideal for this purpose and there are case examples where it has been used in just this way.

For all these reasons it is our opinion that the Seattle Public Library should not have Show Me on its shelves. Presumably decisions are made regularly about which books will be included in the library collection. The continuing damage to the children in the book and the potentially negative effects on children and adults who read it are worthwhile and valid reasons for not promoting the use of this book at taxpayers' expense and with the appearance of societal endorsement.

OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY COURTHOUSE
516—3RD AVENUE
SEATTLE, WASHINGTON 98104

NORM MALENG
PROSECUTING ATTORNEY

(206) 583-2200

PRESS RELEASE

For Release at:
10:00 a.m.
6 May 1985

FOR FURTHER INFORMATION CONTACT:

Richard H. Holmquist
Chief Civil Deputy
583-4437

The Seattle Library Board has decided to retain the book, Show Me! in its collection despite the fact that the book contains pictures of young children engaged in sexually explicit conduct. In our 4 April 1985 submittal to the library board we shared our general legal analysis of how the book fits within the state's newly revised law on the sexual exploitation of children. We must now determine whether criminal charges should be filed.

While we remain of the view that continuted dissemination of this book perpetuates the exploitation of the children used in its production, we decline to initiate a criminal prosecution.

We reach this decision for several reasons. First, there are significant evidentiary problems that lead us to believe we could not meet a burden of proof beyond a reasonable doubt as to the statutory element of possession "for the purpose of sexual

(over)

stimulation of the viewer". Second, it is difficult to separate issues regarding the photographs in Show Me! from the text of the book, which clearly is protected by the First Amendment, as the deliberative process of the library board reflects.

In the future, as in this present instance, if we receive complaints of apparent violations of these statutes, we will review them carefully to determine if criminal charges should be filed, and in a proper case we would do so.

-30-

OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY COURTHOUSE
516—3RD AVENUE
SEATTLE, WASHINGTON 98104
(206) 583-8200

NORM MALENG
PROSECUTING ATTORNEY

6

5 April 1985

John C. Cannon, President
Meade Emory, Vice President
Ronald A. Dubberly, Secretary
Seattle Public Library
1000 4th Avenue
Seattle, WA 98104

Dear Mr. President:

Enclosed is the Statement of King County Prosecutor prepared by our office in response to your request for public input on the book Show Me!

We greatly appreciate you and your fellow trustees allowing us this opportunity to contribute to this important process.

For NORM MALENG, King County Prosecuting Attorney:

Robert S. Lasnik

ROBERT S. LASNIK
Chief of Staff

RSL:dml

Enclosure

cc: The Hon. Douglas W. Jewett
Mr. William L. Dwyer

STATEMENT OF KING COUNTY PROSECUTOR

The book Show Me! has generated considerable controversy across the United States since its English language publication in 1975. Court challenges in 1976 in New Hampshire, Massachusetts, and Oklahoma led to judicial decisions at the trial court level that the book was not legally obscene. In 1977 New York enacted a statute which made it illegal for a person to promote "a sexual performance by a child when, knowing the character and content thereof, he produces, directs or promotes any performance which includes sexual conduct by a child less than sixteen years of age." Sec. 263-15 of the Penal Law of New York. The New York law was unique in not requiring any finding of "obscenity" in order to constitute a crime.

The publisher of Show Me!, St. Martin's Press, Inc. of New York City, immediately began an action in federal district court to enjoin New York prosecutors from enforcing this new law arguing that it was overbroad and unconstitutional and that it was specifically aimed at Show Me!, which the publisher itself asserted "comes within the clear language of § 263.15." St. Martin's Press v. Carey, 440 F. Supp. 1196 (1977). The district court granted the injunction but the second circuit court of appeals reversed that order saying since there was no prosecution begun or threatened against the publisher, the matter was not "ripe" for equitable relief. St. Martin's Press v. Carey, 605

F.2d 41 (2nd Cir. 1979). Neither court ruled on the constitutionality of the law or on whether Show Me! was illegal under this law.

At the same time as these legal proceedings, a criminal prosecution of a New York bookstore owner started its way through the system. Paul Ferber sold to undercover police two films of young boys masturbating and engaging in other sexual activity prohibited by sec. 263.15. In People v. Ferber, 409 N.Y.S.2d 632 (1978) the trial court upheld Ferber's conviction finding the law constitutional despite the fact that the jury found there was nothing obscene about the films. The intermediate appellate court affirmed the conviction (424 N.Y.S.2d 967 (1980)) but by a 5-2 vote the New York Court of Appeals (New York's highest appellate court) reversed on the ground that the statute violated the First Amendment. (422 N.E.2d 523 (N.Y. 1981)).

When the Ferber case reached the United States Supreme Court, the issue was squarely framed: Could child pornography be outlawed not on the basis of its effect on readers or viewers (which implicated traditional First Amendment issues) but by virtue of its sexual exploitation of the children used in its production? The Supreme Court's unanimous answer was that the New York law was constitutional. New York v. Ferber, 458 U.S. 717, 73 L. Ed. 2d 1113, 102 S. Ct. 3348 (1982).

The majority opinion by Justice White in Ferber rejected the New York court's conclusion that the law was unconstitutionally overbroad because it could apply to educational books which "deal with adolescent sex in a realistic but nonobscene manner." In a truly landmark decision, the Court set forth five compelling reasons why states are entitled to greater leeway in the regulation of pornographic depictions of children despite the fact that

> . . . laws directed at the dissemination of child pornography run the risk of suppressing protected expression by allowing the hand of the censor to become unduly heavy.

458 U.S. at 756. These reasons are:

> 1. The state has a great interest in preventing the sexual abuse and exploitation of children through their use as subjects of pornographic material.
>
> 2. The distribution of photographs depicting minors in sexual activity is intrinsically related to their abuse and exploitation.
>
> 3. The advertising and selling of child pornography is an integral part of its production.
>
> 4. The value of permitting photographs of children engaged in lewd sexual conduct is exceedingly modest, if not de minimus.
>
> 5. Recognizing and classifying child pornography as a category of material outside the protection of the First Amendment is consistent with other "content-related" classifications of unprotected speech, such as libel.

See 458 U.S. at 756-64. The Court refused to apply the obscenity standard from Miller v. California, 413 U.S. 15, 37 L. Ed. 2d 419,

93 S. Ct. 2607 (1973) to child pornography involving either live performances or photographs.

> The test for child pornography is separate from the obscenity standard enunciated in Miller . . . in the following respects: A trier of fact need not find that the material appeals to the prurient interest of the average person; it is not required that the sexual conduct portrayed be done so in a patently offensive manner; and the material at issue need not be considered as a whole.

458 U.S. at 764. The reason why First Amendment protections applicable to adult pornography were not given to child pornography is that the focus of the law is on the children sexually exploited or abused in the production and distribution of the material, not on the children or adults who might be exposed to it.[1]

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[1] Professor Laurence Tribe of Harvard University's School of Law had anticipated this constitutional development four years earlier in his book, American Constitutional Law (1978). Professor Tribe was critical of those who railed against pornography based on a possible link between pornography and crime by focusing on the viewer or reader.

> Far more convincing as a rationale for banning at least some types of films is the link to crime by the persons being filmed. Governmental power to prevent murder, rape, and child abuse, for example, should imply power to destroy the primary economic incentive for a distinct category of abusive acts . . .

(Original emphasis.) Tribe, Id at 666, n. 62. The continued distribution of a book of child pornography increases the risk that future children might endure similar exploitation.

The Court accepted the the legislative judgment of New York that the use of children as subjects of sexually explicit materials is harmful to the child's physical, emotional and mental health. The Court also noted that this sexual exploitation is directly implicated by the distribution of these materials in two ways:

> First, the materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation. Second, the distribution network for child pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled.

458 U.S. at 759. Returning once again to why traditional, Miller-type, First Amendment analysis would not apply to this situation, the court noted, with approval, the comment of a New York legislator that

> It is irrelevant to the child who has been abused whether or not the material has a literary, artistic, political, or social value.

458 U.S. at 761. The Court did not completely foreclose the fact that the New York law might reach some protected expression, such as medical textbooks or National Geographic pictorials, but expressed serious doubts that those "arguably impermissible applications of the statute amount to more than a tiny fraction of the materials" within the purview of the law. 458 U.S. at 773.

The response to Ferber was also dramatic. Within six weeks, St. Martin's Press president Thomas McCormick wrote a

letter to several libraries (including the Seattle Public Library) announcing that St. Martin's was ceasing publication of Show Me! for fear of prosecution under the New York law upheld by the Supreme Court. In December of 1982 the United States Senate conducted hearings on a bill to amend the federal Sexual Exploitation of Chidren Act to delete an obscenity requirement for child pornography. Mr. McCormick testified in opposition to that bill saying he disagreed with the Ferber decision and felt the proposed federal law might make distribution of Show Me! a crime. In 1983, Congress passed this amendatory act and the President signed it into law.

In Washington, law enforcement was becoming increasingly aware of the need to amend our state laws on child pornography. In addition to an obscenity requirement, Washington law covered only distribution of child pornography for commercial purposes. Police and prosecutors recognized that much of the market in "kiddie porn" involved trades and exchanges between pedophiles and other collectors where no money exchanged hands. In 1984, the King County Prosecutor led a group of people active in law enforcement or child advocacy in a major effort to revamp our laws. The result was the Sexual Exploitation of Children Act of 1984 (now RCW Ch. 9.68A.) In the preamble the legislature set forth its purpose in adopting this law.

> The legislature finds that the prevention of sexual exploitation and abuse of children

> constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.
>
> The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities.

RCW 9A.68.001. The key definitional section of the act is RCW 9A.68.011(3) which defines what photographs or films are of "sexually explicit conduct."

> (3) "Sexually explicit conduct" means actual or simulated:
>
> (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;
>
> (b) Penetration of the vagina or rectum by any object;
>
> (c) Masturbation, for the purpose of sexual stimulation of the viewer;
>
> (d) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer;
>
> (e) Exhibition of the genitals or unclothed pubic or rectal areas of any minor for the purpose of sexual stimulation of the viewer;
>
> (f) Defecation or urination for the purpose of sexual stimulation of the viewer; and
>
> (g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

In a hearing on this bill before the House Judiciary Committee an amendment was offered to provide a statutory exemption for libraries. It was not passed. The legislators felt that

any material deemed criminal under the law should not be in a library since, to paraphrase the New York Assemblyman quoted in Ferber, "it is irrelevant to the child who has been abused whether or not the material is in a library or a First Avenue bookshop."

It is against this historical and legal backdrop that the present issue must be resolved: Should the Seattle Public Library maintain Show Me! in its collection? Show Me!, as its publisher admits, undoubtedly contains pictures of children under age 16 engaging in sexually explicit conduct, including masturbation and fondling of breasts, genitals, pubic areas and buttocks. There are pictures of people engaging in sexual intercourse, both oral and vaginal, but it cannot be said with certainty whether these people are younger than age 16. The children utilized, some as young as 7 or 8, were posed by the book's author, a Swiss child psychologist. The pictures were taken in West Germany in the early 1970's by an American photographer. The parents gave their permission and were present during the photographing. See Statement of Thomas J. McCormick before the United States Senate Subcommittee on Juvenile Justice, Dec. 10, 1982.

Clearly the book Show Me! is within the purview of the language of this state's law against the sexual exploitation of children. While we are dealing with German children photographed in West Germany in a professional studio, with parental consent, in the early 1970's, the fact remains that the children used were

in no position to give their informed consent either to the posing for sexually explicit pictures or to the international distribution of these pictures. They were exploited. We have long ago discarded the notion that parental consent can legitimize otherwise illegal sexual activity. Indeed the statistics of Harborview Medical Center's Sexual Assault Center show that the majority of children sexually molested are molested by a parent or other adult in a position of authority.

Yet there obviously are aspects of Show Me! that are distinctly different from the vast majority of child pornography. Given that the text by Dr. Helga Fleichauer-Hardt is a legitimate presentation of her ideas on adolescent sexuality and the need for parents to be more open and honest with their children in sex education, it does not appear that the purpose of the book is to sexually stimulate those who read it. It is not an ersatz "treatise" tacked on to a book of pornographic pictures in an attempt to legitimize the book. No matter what one thinks of the philosophy espoused, clearly the First Amendment properly allows the free flow of all ideas and viewpoints, especially on the most controversial and volatile aspects of our lives. The Sexual Exploitation of Children Act is not addressed to written material or drawings. Show Me! should not be removed because of its ideas or viewpoints.

Many concerned citizens have expressed their sentiments on this book by saying, "if you don't like the book, don't look at it." Others have pointed out that it is unfair to blame Show Me! for the fact that some pedophiles might utilize it to abuse children. The same criticism, they argue, could be leveled at Nabokov's Lolita or the J.C. Penney's children's clothing catalog. And others say it is unfair to damn the book because it is touted as "a stunningly good book" by the likes of the Rene Guyon Society, a society of people who advocate sex between adults and very young children[2], or because it routinely shows up in the collections of arrested child molesters.[3]

This type of analysis is not the focus of our presentation.[4] While these concerns about who has access to the book and what those people do with it may be significant issues, our limited purpose is to focus the Board's attention on the children who were sexually exploited in the production of the book and in its continuing dissemination, and the new constitutional analysis which applies to assessing the legality of such materials. We are

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2 The Los Angeles-based Guyon Society's motto is "Sex by year eight, or else it's too late." Children for Sale: Pornography's Dark New World. Reader's Digest. July 1983.

3 Burgess, Child Pornography and Sex Rings, at 83.

4 It was our intention to provide you with oral testimony from four experts in the field of the sexual abuse of children: Dr. Shirley Anderson, former medical director of the Sexual Assault Center at Harborview Medical Center and professor of pediatrics at

extremely sensitive to the fact we are dealing with a book that has been in the collection of a distinguished public library for about ten years. We have taken the unusual step of attempting to provide the Board with background on the problem of the sexual exploitation of children and how the law deals with this important societal issue for two reasons: First, because we had a major role in the recent revisions to the law; and second, because we are in the unfortunate position of seeing the devastation to young children who have been sexually abused. We greatly appreciate the opportunity to provide this information to the Board. We know a great deal more in 1985 than we did ten years ago about a societal problem that too often in the past has been swept under the rug. We should use that increased awareness to reassess Show Me! from a new perspective: Not from traditional pornography analysis of its impact on the viewer but from the enlightened viewpoint of its impact on the children used in its production.

---

4 cont. the University of Washington School of Medicine; Lucy Berliner, social worker at Harborview's Sexual Assault Center and clinical instructor at the University of Washington School of Social Work; Dr. Jennifer James, former University of Washington professor and noted Seattle talk-show host and columnist; and Detective-Sgt. Toby Tyler, with the San Bernardino Sheriff's Department and a clinical professor of pediatrics at the Loma Linda University School of Medicine. The views of these people have been utilized in the preparation of this document, but each has separate viewpoints from differing perspectives on the impropriety of the book and each may, or may not, submit his or her own document to the Board.

bcc: Andrea K. Vangor, Ph.D.

50 E. Foothill Blvd., Arcadia, CA 91006 • (818) 445-1579

January 27, 1987

The Honorable Edwin R. Meese
The Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Meese:

As you know, I have been enthusiastic in my public support of you and the Justice Department since the Administration declared its intention to take the offensive against obscenity by implementing the recommendations of the Commission. We went on the radio to an estimated Focus on the Family audience of some 2 million listeners, rallying them in support of you and the President. We were especially pleased by your announced plans to form a task force to fight obscenity.

Now I am concerned, however, that two months have passed since those events and, as far as I can see, no action has been taken either to appoint the leader of the task force or to name the members of that group. Moreover, it has come to my attention that you are prepared to recommend the nomination of a federal judge in the state of Washington who has a pro-pornography record on the bench.

The nomination of William Dwyer as a Federal Court Judge has naturally alarmed the pro-family, anti-pornography citizens of Washington, who, in turn, have sought my counsel. Why, they have asked, would Attorney General Meese and President Reagan nominate a judge who declared a book of explicit child pornography acceptable for the public library? That book, titled Show Me, is intended for reading by children! It depicts young children and pre-adolescents nude and fondling each others genitalia, accompanied by captions indicating their enjoyment of sexual fore-play and intercourse. The photos then progress to show anterior penetration plus anal exploration while the dialogue continues expressing how much these children enjoy this. The text declares how healthy it is for young children to be exposed to explicit sexual activity. I'm enclosing xerox copies from the book, itself.

Show Me, has become a favorite of pedophiles and is, at the least, repugnant to all those who care about decency and pro-family values. I trust you agree that William Dwyer's decision to place Show Me in the public libraries of Washington is sufficient evidence to demonstrate his lack of sensitivity to the problem of obscenity. I ask that you recommend to the President that Dwyer's nomination be dropped as soon as possible.

I would also appreciate some indication as to when we can expect to see the formation of the promised task force and their plan to implement the recommendations of the Commission.

Finally, it is my understanding that you, Deanne Tilton and I will be given an award by the Los Angeles County Board of Supervisors on February 10. I look forward to seeing you on that day.

Sincerely,

James C. Dobson, Ph.D.
President

JCD/do

Enclosure

ALBERT F. CANWELL
West 5921 Rutter Parkway
Spokane, Washington 99208

1986 MAR 25 PM 2:47

March 19, 1986

Senator Paul Laxalt
Senate Office Building
Washington, DC 20510

Re: William L. Dwyer

Dear Senator Laxalt:

Because you are close to the president and a considerable power in the U. S. Senate, I am seeking your attention in a matter that seriously concerns the Administration and the integrity of the federal judiciary. It has to do with a sly attempt to slip a very questionable character past the attorney general, the senate, and the president, and onto the federal bench.

The name of Seattle attorney William L. Dwyer has recently been placed in nomination to fill a coming vacancy on the bench in the Western District of Washington. Dwyer is a prominent Democrat who was active in fundraising for Mondale-Ferraro and is a leading state ACLU attorney. He has been placed in nomination by the two Washington State senators, Evans and Gorton, who refuse to name any Republican candidate, but insist that Dwyer alone is acceptable. (This is not the first time that Senator Gorton has fronted for the ACLU. He was a character witness for the Goldmarks in the Goldmark v. Canwell case in Okanogan County of north central Washington.)

Without Dwyer's notoriety as a long-time activist ACLU attorney, he would have little or no public visibility or recognition. His one bid for fame was his part in the ACLU-contrived libel case of Goldmark v. Canwell, et al, which he lost. The case was designed to silence and punish several visible pro-American anti-communists who were an annoyance to the organized left. Dwyer and his followers now go about the state alleging that Dwyer <u>won</u> the case. This bold attempt to rewrite history is being done in part to enhance Dwyer's chances of attaining the position to which he has been nominated.

Dwyer's client in the libel case, John Goldmark, was a Democrat whose leftwing bias was concealed from his constituents until he had built up strength in the Washington State Legislature. He and his wife then began actively promoting far left programs throughout the state. John's wife, Sally, was a former high-level communist in Washington, D. C.,

(continued)

having been an important member of the infamous Perlo-Kramer communist spy cell. This information had been carefully kept from people in the state of Washington and when I released it Goldmark's constituents abandoned him and defeated him by a more than three-to-one vote in the subsequent election. After his defeat, John Goldmark, who was on the state board of the ACLU, got together with other ACLU lawyers and instituted this specious libel action, that, among other objectives, was intended to save face for the Goldmarks and salvage the character of the ACLU, which had been thoroughly exposed during the revelations of the concealed communist connections of the Goldmarks.

Dwyer's recent book, The Goldmark Case (University of Washington Press, 1984) is an apologetic for the ACLU and the Goldmarks, and carries a foreword by Norman Dorsen, president of the ACLU. Dwyer has "gotten away" with this activity heretofore; I do not think he should get away with this one, since it has to do with the integrity of the federal bench.

The appointment of Dwyer would be out of keeping with the task that the president has undertaken to elevate the bench to its one-time honorable level, and would be an embarrassment to all of the president's admirers. Such appointments in the past are what have brought the judiciary to its present low estate.

I am available for any part that I may play in defeating this unwholesome maneuver.

Sincerely,

A. F. Canwell

Res. (509) 466-5272
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Enc. - 1

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August 16, 1982

Dear Bookseller,

It is my regretful duty to inform you that the United States Supreme Court, in People v. Ferber, has reached a decision that forces St. Martin's Press to cease publication of SHOW ME! by Dr. Helga Fleischauer-Hardt and Will McBride.

The court ruefully concedes that the decision, aimed at deterring child abuse, could have an 'overbroad' application to which legitimate works--like National Geographic or SHOW ME! -- might fall prey. But they could not bring themselves to find a way around this difficulty.

The result is a vexing erosion of our First Amendment right to read and publish, and the loss of a superb and enlightened work of sexual orientation for young people. I have no illusions that everyone approves of SHOW ME! , but there are many parents, educators, librarians and psychologists who feel as I do that it is the best available book for fostering in young people a healthy attitude towards sex.

So I am deeply distressed that such a book must now be suppressed. But the Court tells me that that is the law of the land, and I hereby withdraw the title from St. Martin's Press trade list.

Yours,

Thomas J McCormack
President

TJMC/dc

St. Martin

Mr. TAYLOR. My name is Bruce Taylor, Mr. Chairman and members of the committee, and I am an attorney for a national organization called Citizens for Decency Through Law.

Our purpose here is more to condemn the book, and the use and the open provision of that book, "Show Me," to the public by a library, and to pose the question of whether, when a lawyer makes a professional judgment that such a book as "Show Me," containing explicit pictures of children who were photographed, obviously not engaging in sex on their own, but specifically posed for the purpose of making the pictures for this kind of book, and says that this book has serious value, and that therefore no crime could be committed by a person, even including a library, whether that opinion is something the lawyer would carry to the bench as a judge, since, in our opinion, it is directly contrary to the Federal Child Protection Act of 1984, the decision of the Supreme Court in *Ferber,* the opinions of all the State courts that have ruled on child pornography laws since the requirement that pictures of kids be obscene was removed.

Now "Show Me," as the testimony and as many of the exhibits in the committee's records show, is a book that is widely condemned by law enforcement agencies because it is the pedophile's Bible in the United States. It is the book most often used by pedophiles. They love it. As a matter of fact, libraries who still have it have a hard time keeping it because it is so often stolen.

It is very seldom the subject of prosecutions because it's no longer being printed or distributed commercially, and the pedophiles who have it aren't about to put it in the mail, and most of the ones that they might have contact with would already have their own copy. So it's not likely to come up as a subject of Federal prosecution, because the Federal law does not deal with possession, but only with interstate transportation.

Since the book's out of print and nobody that has it will get rid of it, there's not likely to be a Federal case on it. It may very well be the subject of possession convictions like the one in Washington, and there are ten States that do have a possession law.

It may also be the subject of civil enforcement actions, and in our opinion, we think that should have been the proper course of conduct for the King County Prosecutor's Office. I don't disagree with their decision to forego criminal prosecution against the library; I never would have wanted to do that when I was a prosecutor, and I've handled hundreds of obscenity cases.

But there are two other remedies available in the Washington code; one is the forfeiture provision, and then there's the provision that's always available, to seek injunctive action.

The book "Show Me" clearly has pictures of children engaging in illegal activities that were forced upon them by some adult. And whether or not, as Mr. Dwyer says, the parents gave consent for those children, and whether or not the text has serious value, as Justice O'Connor said in her concurring opinion in *Ferber,* you can discuss pedophilia—you can even advocate child molesting if you want to, but you can't beef up or spice up a book by illustrating with pictures of kids. If those pictures were taken in the United States today, we'd throw them all in jail, and everybody would be happy about that.

Our question, therefore, is since "Show Me" is so clearly in violation of the Washington child pornography statute and the Federal child pornography statute, and it violates the tenor, both written and in spirit, of *Ferber,* and Mr. Dwyer gave the opinion that it had serious educational or scientific value, and those aren't any of the criteria for the crime that he was asked to give an opinion on, is he stating a judicial and a legal philosophy that he will take to the bench, and will he substitute and try to infuse a serious value or an educational purpose defense under the child pornography statutes of the States of Washington and of the U.S. Congress, or will he follow the act as it was passed by Congress and the State legislature, as interpreted by Supreme Court?

I think that's a legitimate question because of the way Mr. Dwyer framed his opinion—not that you probably will escape conviction because a jury won't want to convict you, not that you probably won't be convicted because some of the pictures don't appear to be designed to increase lust, but that the book has serious value, and therefore you can't be found to violate a crime.

That is not a defense under the existing law. So I think that poses a question that this Congress, in support of its own child pornography laws, has to ask the candidate. It's not one that I can give.

Thank you.

[The statement of Bruce A. Taylor follows:]

Citizens for Decency through Law, Inc.

UNITED STATES SENATE

COMMITTEE ON THE JUDICIARY

IN RE:

Confirmation Hearings

on the

Nomination of

William L. Dwyer

as Judge of the

United States District Court

for the

Western District of Washington

TESTIMONY OF:

Bruce A. Taylor
General Counsel
Citizens for Decency through Law
210 Continental Plaza
11000 N. Scottsdale Road
Scottsdale, Arizona 85254
(602) 483-8787

October 22, 1987

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Colchester, Essex, England
Hon. David L. Wilkinson
Attorney General of Utah
Salt Lake City, Utah
Homer E. Young
Former FBI Agent
Thousand Oaks, California

Mr. Chairman and Members of the Committee:

PROFILE OF THE WITNESS;
BRUCE A. TAYLOR

I am General Counsel for Citizens for Decency through Law, Inc., a national non-profit legal assistance organization specializing in providing technical legal assistance and advice to prosecutors, police, legislative bodies, and other state, local, and federal law enforcement agencies. Our legal staff is made up of former federal and state prosecutors with experience in criminal and civil obscenity law enforcement and harmful to minors and child pornography cases. We conduct and instruct at seminars on trial procedure, search and seizure, and evidence issues for police and prosecutors in obscenity and minors protection cases across the country, as well as assist as special prosecutors at trials and on appeals. CDL has filed friend of the court briefs in over fifty U.S. Supreme Court cases and in several state supreme courts and federal district courts and courts of appeals.

I was a prosecutor for the City of Cleveland in the 1970's, where I handled hundreds of obscenity cases and appeals. I have argued cases before the U.S. Supreme Court, the Supreme Court of Ohio and of Colorado, and the U.S. Courts of Appeals for the Sixth and Ninth Circuits on obscenity and First Amendment law. Since 1973, I have been involved in major state and federal litigation and appeals on criminal obscenity prosecutions, civil obscenity actions, providing harmful materials to minors prosecutions, minors display law cases, child pornography prosecutions, libel and slander cases, and porn-industry challenges in federal and state courts against obscenity and child porn statutes, zoning ordinances, display laws,

TV and cable indecency laws, and dial porn legislation. Although I handled a full range of criminal cases along with obscenity and federal civil rights cases as a prosecutor, since joining CDL in 1979, I have exclusively limited my law practice to law enforcement assistance in the areas of pornography and obscenity and related First Amendment issues.

OPPOSITION TO CONFIRMATION
OF MR. WILLIAM L . DWYER
AS U.S. DISTRICT JUDGE

As a lawyer concerned for the administration and enforcement of state and federal laws for the protection of the public against obscenity and child pornography, I must object to the nomination of Mr. Dwyer as a federal judge. Mr. Dwyer has shown by his choice of associations and legal practice that his legal philosophy is contrary to that of the Congress and state legislatures and city councils who have passed laws regulating obscenity, child pornography, and indecency in the radio, telephone, and television media. Although it is permissible to believe that the First Amendment should be an absolute ban on government regulation of obscenity and child pornography, as the American Civil Liberties Union advocates, such is not the law in the United States and any judge not willing and able to uphold, defend, and enforce existing constitutional laws is unable, by that position, to take the oath of a federal judge. As a member or a long-time former member of the A.C.L.U., Mr. Dwyer must be able at the present time to repudiate the policy and opinion of the A.C.L.U. that all obscenity laws and child pornography laws are or should be unconstitutional and invalid. Mr. Dwyer must be affirmatively able to swear he will uphold and enforce valid federal laws on these

subjects to the best of his present legal ability. All federal judges must so swear, and until Mr. Dwyer is willing to do so, I feel he must not be confirmed.

LEGAL ISSUES INVOLVED
IN MR. DWYER'S POSITIONS

Serious legal issues are involved concerning Mr. Dwyer's representation of clients charged with or alleged to be violating state and federal obscenity and child pornography statutes. Mr. Dwyer represented the defendants, and prevailed on appeal, in the case of Rabe v. Washington, 405 U.S. 313 (1972), an obscenity case against a drive-in theater. Mr. Dwyer is a prominent member of the A.C.L.U. and has represented the A.C.L.U. in the past. Mr. Dwyer recently defended the book Show Me for the Seattle public library against the King County Prosecutor. Although being a defense attorney for alleged pornographers or being a member of the A.C.L.U. does not automatically disqualify a lawyer for judicial office, serious questions need be raised if the candidate shares the views of such clients or organizations and would refuse to enforce and uphold federal statutes passed by Congress. When a lawyer's opinions and legal philosophy are consistent with those of the pornography industry and indicate a willingness to actively change the law or interpret the law in defense of hard-core pornography or child pornography, then such predisposition should disqualify one for a federal judgeship. Such a propensity to make judicial rulings against enforcement of obscenity laws was a central factor in the Senate's rejection of Mr. Abe Fortas as Chief Justice, and the Judiciary Committee should be satisfied that Mr. Dwyer is willing and

intends to enforce present federal obscenity and child pornography laws as interpreted by the U.S. Supreme Court.

The Show Me case is significant in this regard because it is the book most often used by pedophiles and child molesters in this country to help seduce children and to fantasize for masturbation purposes. It is the book most often seized by police, postal and customs inspectors, and FBI agents from the collections of pedophiles. It is a book which contains actual photos of pre-pubescent and young teenage boys and girls in explicit sexual activity. Regardless of the dialogue and discussions of the authors about the pleasures of adolescent sexuality, the photos are crime scene photos of sexual child abuse of the type Congress specifically meant to prevent in the Child Protection Act of 1984. The publishers of Show Me, St. Martin's Press, testified before Congress in opposition to that Act because they felt the book had sex education value but could become illegal if the obscenity guidelines of the "Miller Test" were removed from the federal child pornography statues. St. Martin's Press also appeared as amicus curiae with the A.C.L.U. against the New York child porn law and in support of the convicted defendant in New York v. Ferber, 458 U.S. 747 (1982). Congress specifically rejected the "value" exception in passing the Act of 1984 and followed the U.S. Supreme Court's opinion in New York v. Ferber that sexually explicit pictures of children had no First Amendment protection and could be made per se unlawful by state and federal laws. Present laws do not allow for an educational value exception for child pornography distributors and Show Me is clearly

within the reach of federal and State of Washington child porn statutes.

Justice O'Connor, in her concurring opinion in Ferber, at 775, stressed that a "social value" exception would "increase opportunities for the content-based censorship disfavored by the First Amendment." She recognized that the child porn statute "permits discussion of child sexuality, forbidding only attempts to render the 'portrayals somewhat more "realistic" by utilizing or photographing children'". Justice O'Connor continued that the statute could be overbroad "because it bans depictions that do not actually threaten the harms identified by the Court". She identifies two examples of child-sex pictures that might not be considered harmful to the minors and contribute to child abuse and exploitation, which the Court discusses in the majority opinion as the justification for upholding the law. One example is the indigenous rites of other cultures, seen in National Geographic, and the other is more pertinent here. "For example, clinical pictures of adolescent sexuality, such as those that might appear in medical textbooks, might not involve the type of sexual exploitation and abuse targeted by New York's statute. Nor might such depictions feed the poisonous 'kiddie porn' market that New York and other states have attempted to regulate." In my opinion and experience, Show Me cannot even arguably be defended as serious scientific material and it squarely does "threaten the harms identified by the Court". This experience and opinion concerning the harm in Show Me being made available to the public, and the pedophiles therein, is universally shared and known by the law enforcement officers "in the field" doing

investigations into the commercial and private trade in child porn and sexual abuse of children, including U.S. Postal and Customs inspectors, the FBI, and the police departments in America's cities, who condemn Show Me as "The Pedophile's Bible" and find its main use as that of a seduction aid for child molesters and pedophiles who "soften-up" kids by the apparent approval of such child sex pictures and activities by the "adult community" the children's parents live in and abide by. Any serious American, or indeed civilized, medical college would not condone, much less authorize or procure, children to engage in sex for a photo session to illustrate child sexuality. Medical doctors seek to study child sexuality for its harms, both physical and disease related and for its psychological problems. The Supreme Court conclusively condemned the sexual exploitation of children performing sexual acts in front of an adult's camera. It is logically, and legally, inconsistent to say that any serious discussion of child sexuality and its problems and harms must be or can legitimize the use of child performers to illustrate the point. This is exactly what the photographers and writers of Show Me have done. The German "child psychologist" and her collaborators would be arrested and jailed for pandering and child exploitation, along with the children's parents who consented, if the Show Me pictures were produced in the United States. This is clear from 18 U.S.C. 2251. The pictures so taken would be and are in violation of 18 U.S.C. 2252 and are also obscene and in violation of 18 U.S.C. 1461 if mailed, and 18 U.S.C. 1462 and 1465 if transported in interstate commerce. Those pictures were not necessary for the German "doctor" to support her philosophy of open and healthy child sexuality and advocacy of

early and indiscriminate sexual activity among children outside of marriage or adult commitment.

The legal opinion of the Office of the Prosecuting Attorney of King County, Washington, dated April 5, 1985, recognized that Show Me was used by pedophiles and kept in their collections, but nevertheless concluded that "it does not appear that the purpose of the book is to sexually stimulate those who read it". This conclusion is inconsistent with the stated views of the authors and photos that child sex is to be encouraged to the point of orgasm. The King County prosecutors recognize that the children in Show Me "were exploited", could not give consent, and stressed that the library should analyse this book "from the enlightened viewpoint of its impact on the children used in its production". The library and Mr. Dwyer rejected this "enlightened viewpoint" and maintained the long-standing official position of the ACLU and the Intellectual Freedom Committee of the American Library Association that child pornography laws, as well as obscenity laws, were censorship regardless of who they seek to protect and that the printed word and photographic material, of adults and of children, should enjoy immunity from government restriction, as the "price we must pay for freedom". The U.S. Supreme Court in Ferber mandates that courts protect first the children who are used in sexually explicit photo spreads and would exclude only other cultures' and medical uses of child sex pictures. Show Me is not a medical text, it is a book for the public aimed at fostering the philosophy of a perverted foreign "doctor" who believes children have a right to open sexuality. This is not the exception that Justice O'Connor discussed, and was

specifically rejected by the majority in Ferber. The book is used by pedophiles for child arousal and for their own arousal. It fosters child abuse and exploitation. It cannot be said, therefore, that Show Me was not designed to "sexually stimulate those who read it". If its authors didn't know that, they can't be said to be "experts".

Mr. Dwyer's legal opinion that Show Me is not illegal under federal and Washington child porn laws was not based in the reasoning that Ferber demands, that of concern for the children photographed and exploited in the book. Since the Washington criminal trial and appeal courts have held Show Me to be illegal under Washinton's chld porn laws for possession or distribution, it is irresponsible for any lawyer to advise a client, including one so important as a library, that no laws are broken by Show Me and thus expose the client to felony prosecution. Although the King County prosecutors declined criminal prosecution of the library, an unsightly confrontation at best, civil injunction actions could be filed in state courts, and federal prosecution is still possible if the book is distributed in interstate commerce or mailed.

The concern CDL shares with law enforcement agencies that Show Me is a dangerous and illegal publication makes Mr. Dwyer's defense of that book an important issue for the Judiciary Committee.

During the course of the Seattle Show Me controversy, Mr. Dwyer gave this professional legal opinion after being retained to help the library defend its distribution of Show Me:

> "The courts would clearly hold that this book is serious in its purpose and that it has real legitimate substantial value as an educatinal resource. I don't believe there is a sufficient

legal basis, under either the federal law or state statute, to justify removing the book from the collection of the library."

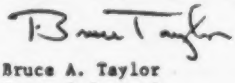
The question for this Congress is whether a judicial nominee will enter the federal court with a predisposition and an intent to disregard the acts of Congress and the decisions of the Supreme Court because the judge's views coincide with those of the A.C.L.U. or are otherwise in direct conflict with the intent of Congress. Since Mr. Dwyer has argued for an obscenity type requirement for sexually explicit pictures of children, after Congress repealed such an obscenity test, the Judiciary Committee should inquire whether he will enforce as a judge what he atacked as a lawyer.

Since Mr. Dwyer has been a member of and a lawyer for the A.C.L.U., the Committee should inquire whether he will follow the A.C.L.U. legal position that all state and federal obscenity and child pornography laws are and should be unconstitutional. The A.C.L.U. has formally and in testimony before the President's Commission on Pornography (1970), the Attorney General's Commission on Pornography (1986), and numerous times over the years before committees of Congress, stated that sexually explicit pictures of adults and of children, once taken, should enjoy freedom of open circulation, no matter how explicit, violent, or bizarre the depictions. The Congress is entitled to know if Mr. Dwyer will follow this legal position, or that of the Supreme Court that obscenity and child pornography have no constitutional protection and are subject to criminal and civil sanctions.

These questions are serious and central to this confirmation process. They are questions I cannot answer as a lawyer reviewing the arguments and briefs of another lawyer. They are questions that Mr. Dwyer must answer as a candidate for a lifetime position as judicial guardian of the laws of the United States.

Until and unless Mr. Dwyer can assure the Congress and the public that he will uphold, follow, defend, and enforce the valid federal and state obscenity and child pornography laws, his confirmation should be withheld.

Respectfully submitted,



Bruce A. Taylor
General Counsel

Citizens for Decency through Law, Inc.

September 10, 1987

Steven Metalitz, Esq.
Special Counsel
Senate Judiciary Committee
224 Dirksen Building
Washington, D.C. 20510
(202) 224-8191

Dear Mr. Metalitz:

I apologize for not being able to attend the hearing on September 11th concerning the nomination of Mr. William Dwyer for U.S. District Court. I would like to appear and testify at a later date if another day of hearings is held.

My testimony would consist of raising the legal issues concerning Mr. Dwyer's representation of clients charged with or alleged to be violating state and federal obscenity and child pornography statutes. Mr. Dwyer represented the defendants, and prevailed on appeal, in the case of Rabe v. Washington, 405 U.S. 313 (1972), an obscenity case against a drive-in theater. Mr. Dwyer is a prominent member of the A.C.L.U. and has represented the A.C.L.U. in the past. Mr. Dwyer recently defended the book Show Me for the Seattle public library against the King County Prosecutor. Although being a defense attorney for alleged pornographers or being a member of the A.C.L.U. does not automatically disqualify a lawyer for judicial office, serious questions need be raised if the candidate shares the views of such clients or organizations and would refuse to enforce and uphold federal statutes passed by Congress. When a lawyer's opinions and legal philosophy are consistent with those of the pornography industry and indicate a willingness to actively change the law or interpret the law in defense of hard-core pornography or child pornography, then such predisposition should disqualify one for a federal judgeship. Such a propensity to make judicial rulings against enforcement of obscenity laws was a central factor in the Senate's rejection of Mr. Abe Fortas as Chief Justice, and the Judiciary Committee should be satisfied that Mr. Dwyer is willing and intends to enforce present federal obscenity and child pornography laws as interpreted by the U.S. Supreme Court.

The Show Me case is significant in this regard because it is the book most often used by pedophiles and child molesters in this country to help seduce children and to fantasize for masturbation purposes. It is the book most often seized by police, postal

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inspectors, and FBI agents in the collection of pedophiles. It is a book which contains actual photos of pre-pubescent and young teenage boys and girls in explicit sexual activity. Regardless of the dialogue and discussions of the authors about the pleasures of adolescent sexuality, the photos are crime scene photos of sexual child abuse of the type Congress specifically meant to prevent in the Child Protection Act of 1984. The publishers of Show Me, St. Martin's Press, testified before Congress in opposition to that Act because they felt the book had sex education value but could become illegal if the obscenity guidelines of the "Miller Test" were removed from the federal child pornography statutes. Congress specifically rejected the "value" exception in passing the Act of 1984 and followed the U.S. Supreme Court's opinion in New York v. Ferber that sexually explicit pictures of children had no First Amendment protection and could be made per se unlawful by state and federal laws. Present laws do not allow for an educational value exception for child pornography distributors and Show Me is clearly within the reach of federal and State of Washington child porn statutes.

The concern CDL shares with law enforcement agencies that Show Me is a dangerous and illegal publication makes Mr. Dwyer's defense of that book an important issue for the Judiciary Committee.

During the course of the Seattle Show Me controversy, Mr. Dwyer gave this professional legal opinion after being retained to help the library defend its copies of Show Me for "open shelf" circulation:

> "The courts would clearly hold that this book is serious in its purpose and that it has real legitimate substantial value as an educational resource. I don't believe there is a sufficient legal basis, under either the federal law or state statute, to justify removing the book from the collection of the library."

This opinion is directly contrary to the decision of New York v. Ferber, 458 U.S. 747 (1982), and is only arguably consistent with the separate opinion of Justices Brennan and Marshall that "depictions of children that in themselves do have serious literary, artistic, scientific, or medical value" should be protected by the First Amendment. Justices Brennan and Marshall also repeated their view that the government "lacks power to suppress sexually oriented materials" unless there is "exposure, or particular harm, to juveniles or unconsenting adults". See Ferber, 458 U.S. at 776-77. The viewpoints of these Justices are directly contrary to the intent of Congress in the federal obscenity and child exploitation laws and are contrary to the majority opinions of the Supreme Court throughout its history.

The question for this Congress is whether a judicial nominee will enter the federal court with a predisposition and an intent to disregard the acts of Congress and the decisions of the Supreme Court

because the judge's views coincide with those of Justice Brennan and Marshall. Since Mr. Dwyer has argued for an obscenity type requirement for sexually explicit pictures of children, after Congress repealed such an obscenity test, the Judiciary Committee should inquire whether he will enforce as a judge what he attacked as a lawyer. Since Mr. Dwyer has been a member of and a lawyer for the A.C.L.U., the Committee should inquire whether he will follow the A.C.L.U. legal position that all state and federal obscenity and child pornography laws are or should be unconstitutional. The A.C.L.U. has formally and in testimony before the President's Commission on Pornography (1970), the Attorney General's Commission on Pornography (1986), and numerous times over the years before committees of Congress, stated that sexually explicit pictures of adults and of children, once taken, should enjoy freedom of open circulation, no matter how violent or bizarre the depictions. The Congress is entitled to know if Mr. Dwyer will follow this legal position or that of the Supreme Court that obscenity and child pornography have no constitutional protection and are subject to criminal and civil sanctions.

These questions are serious and central to this confirmation process. They are questions I cannot answer as a lawyer reviewing the arguments and briefs of another lawyer. They are questions that Mr. Dwyer must answer as a candidate for a lifetime position as judicial guardian of the laws of the United States.

I appreciate this opportunity to express some of my concerns and I hope the Committee will provide another date for testimony and that I may appear and testify to the Committee on these issues. Thank you for your consideration and cooperation in this regard.

Sincerely,

Bruce Taylor

Bruce A. Taylor
General Counsel

BAT/ak

Citizens for Decency through Law, Inc.

1987 AUG 24 PM 12:32

August 21, 1987

Honorable Dennis DeConcini
328 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator DeConcini:

No one knows better than our organization the difficulty of enforcing valid obscenity laws in America. We are, therefore, compelled to raise an objection to the nomination of William Dwyer to be a federal judge for the Western District of Washington.

We were greatly heartened, as we are certain you were too, by the Supreme Court's unanimous decision in New York v. Ferber five years ago. That decision, and the subsequent Congressional and state legislation based on it, sent shock waves through the child porn industry in this country. Allowing prosecution for promotion of child pornography, without the state proving that the material was legally obscene, tremendously facilitated the state's protection of children. And only a very few could find any damage done to the First Amendment by this allowance.

Apparently William Dwyer is one of those of the opinion that some sexually explicit depictions of children ought to enjoy First Amendment protection. We base this conclusion on Mr. Dwyer's legal opinion given after the Seattle Public Library retained him to formulate a legal justification for keeping their copies of Show Me. Contrary to the clear intents of the Ferber decision and the federal and Washington statutes, Mr. Dwyer opined:

> The courts would clearly hold that this book is serious in its purpose and that it has real legitimate, substantial value as an educational resource. I don't believe there is sufficient legal basis, under either the federal law or state statute, to justify removing the book from the collection of the library.

We not only do not agree with Mr. Dwyer's opinion, we do not see where the law allows the issue.

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We recognize that Mr. Dwyer is not the originator of the "serious value" argument in the context of child pornography. The seeds for it were sown in Justice Brennan's concurring opinion in the Ferber decision, to which Justice Marshall joined. But whatever force this opinion had was clearly spent by the time Congress deleted the obscenity requirement from the federal child porn statutes (over the objections of Show Me's publisher that such action would outlaw the book). And the argument was also clear rejected when the Washington legislature declined to exempt libraries from its enactment of a similar child porn statute. We think the federal and Washington statutes follow, beyond a doubt, Justice O'Connor's interpretation of the Ferber decision:

> The compelling interests identified in today's opinion . . . suggest that the Constitution might in fact permit [the state] to ban knowing distribution of works depicting minors engaged in explicit sexual conduct, regardless of the social value of the depictions. For example, a 12-year-old child photographed while masturbating surely suffers the same psychological harm whether the community labels the photograph "edifying" or "tasteless." The audience's appreciation of the depiction is simply irrelevant to [the state's] asserted interest in protecting children from psychological, emotional, and mental harm.

We find Mr. Dwyer's Show Me opinion offensive for the following reasons. First, this opinion misreads the law. Second, in saying what the library wanted to hear, Mr. Dwyer has left his client open for criminal prosecution. Last, we suspect that this opinion is a deliberate attempt to confuse any simple and useful reading of the present federal and similar state statutes proscribing child pornography and to reintroduce an obscenity requirement into them. By his opinion, Mr. Dwyer identifies himself with those who absolutely oppose any form of "censorship," even that which has helped decrease the sexual exploitation of children.

As a practical matter, Show Me is a particularly dangerous book. It contains explicit photographs of prepubescent and teenage children masturbating and performing sexual acts. It is also the favorite book of child abusers in this country. Child porn experts such as Ken Lanning of the FBI, Postal Inspector Dan Mihalko, and Los Angeles Detective Bill Dworin call Show Me "the pedophile's bible." They report that it is often found in the collections of arrested pedophiles and is used by molesters to "educate" and seduce children.

We feel that this matter is important enough to ask you to seriously consider opposing Mr. Dwyer's confirmation. We appreciate the work that you have done in the past to help hold back the swell of obscenity and child pornography that is flooding our nation. We hope that you will ask Mr. Dwyer whether, as a federal judge, he will hold the law above his own opinions and, then, confront him with his part in the Show Me controversy. As you are aware, if the "serious value" argument ever entangles itself into child porn law, Ferber and the federal and state statutes based on it may as well have gone unwritten. For his part in all this, it is apparent that Mr. Dwyer has disqualified himself from consideration to be a judge on the Federal District Court.

Thank you for your consideration and help.

Sincerely,

William D. Swindell
President and
National Director

WDS:tjo

cc: All Members of the Senate Committee
on the Judiciary
Senator Jesse Helms
Senator William L. Armstrong

P.S. Dr. Andrea Vangor of Seattle is an interested citizen and community leader who would like to testify about the Show Me issue at Mr. Dwyer's hearing before the Judiciary Committee. Please advise us how to add Dr. Vangor's name to the witness list so that further arrangements can be made. Also, to facilitate the preparation of Dr. Vangor's testimony and to ensure that sufficient hearing time is allotted for the consideration of Mr. Dwyer's credentials and the objection we have raised, we ask that Mr. Dwyer's hearing be scheduled after the hearings for Judges Bork and Sessions. Thank you.

Senator LEAHY. I just want to make sure I understand. Do you take a position for or against Mr. Dwyer for the judgeship?

Mr. TAYLOR. Senator Leahy and members of the panel, at this time, in the view of the opinion that Mr. Dwyer gave supporting the book itself, and giving an opinion that it wasn't a crime for the library, based upon a defense that doesn't exist in the statute, I think that until Mr. Dwyer is willing to clarify that and, in effect, retract the opinion that the book is not child pornography and that serious value is a defense, that we think that his nomination should not be confirmed.

Senator LEAHY. I'll save my other question. Mr. Fein.

Mr. FEIN. Thank you, Mr. Chairman and members of the committee. My name is Bruce Fein, and I'm speaking for myself, not for the Heritage Foundation, although I am a visiting fellow there.

I am not speaking today either for or against the nominee, Mr. Dwyer, but simply to raise what I consider is a serious question, based solely upon his authorship of the book, "The Goldmark Case," which is right here, as to whether he is endowed with the intellectual temperament imperative to the fair administration of justice.

"The Goldmark Case" recounts Mr. Dwyer's representation of John and Sally Goldmark in a celebrated libel suit in the early 1960's. In conjunction with an impassioned political campaign for State office in Washington, incumbent Representative John Goldmark, a liberal Democrat, was attacked as communist or communist sympathizer through innuendo and guilt by associations.

And during this particular libel trial, Mr. Dwyer, I think, showed that he richly appreciates the unfairness of hurling reckless, uncorroborated, defamatory charges against politicians and others.

I need not repeat what's in my statement, which I believe the committee has, to demonstrate that Mr. Dwyer certainly is a man who is familiar with the law of libel and the unfairness of un-cross-examined allegations that smear a person's reputation.

But in "The Goldmark Case," Mr. Dwyer, I suggest, is guilty of the identical smear tactics he so eloquently denounces when used against the Goldmarks.

Let me begin. On pages 21 to 25 of his book, Mr. Dwyer describes, or asserts by innuendo, that, quote—this is his term, "The radical right organizations that emerged in the 1960's and their members," quote, "saw socialism in the Kennedy government's call for civil rights legislation, an unbalanced budget, the anti-poverty program and Medicare. They saw betrayal in the Peace Corps, the Alliance for Progress in Latin America. They felt threatened by black protest marches and sit-ins demanding integration. Some saw a conspiracy whose agents were everywhere."

Now, nowhere are these assertions documented. He continued, without offering substantiation, that the John Birch Society, Robert Welch, Dr. Fred Schwartz, Billy James Hargis, The Conservative Society of America, General Edwin Walker, Eddie Rickenbacker, and Senator Strom Thurmond are staunch adherents to, quote, "radical right" beliefs, such as the desirability of withdrawal from the United Nations, a belief that fluoridated water is a communist plot, and that anticommunism is the force of moral right.

Mr. Dwyer continues in his book, without documentation, to insist that, quote, "the intellectual fount of the radical right was Harding College, a school run by members of the Church of Christ at Searcy, Arkansas."

Mr. Dwyer by innuendo associates with, quote, "hate movements" on pages 24 to 27 General Albert Wedemeyer, Admiral Arthur W. Radford, General Charles A. Willoughby, Ronald Reagan, and John Wayne.

He further maintains that these and other members of the, quote, "radical right had little faith in democracy or time for its processes." He says, "it saw Communism as an absolute evil which must be destroyed by whatever means came to hand. Thus," he says, "its believers walked the line of extremism: the conviction that one's enemies are so dangerous and so hateful that individual liberties and the time-consuming protection of law and customs must be thrust aside."

Mr. Dwyer advances no support for his defamatory assertions regarding members of the radical right, which he includes as Ronald Reagan, Strom Thurmond, and John Wayne. He treats all radical right members as intellectually and politically fungible, and in substance accuses them of infidelity to the Constitution, its ethos, and American traditions of tolerance.

Mr. Dwyer on page 29 assails Senator Thurmond as, quote, "a natural hero of the far right," end quote, a charge he purports to bolster by noting the Senator's support for the first amendment right of a Forest Service employee, Don Caron, to express controversial views regarding Communism in a newspaper column. The U.S. Supreme Court, it should be noted, has held that a government employee is entitled to the exercise of free speech unless it interferes with the discharge of his government responsibilities, I'm sure a principle that Mr. Dwyer is well aware of as a member of the American Civil Liberties Union.

What is dismaying in "The Goldmark Case" is Mr. Dwyer's failure to offer those defamed as irrational right wingers who promote hate groups opportunities to answer his grave allegations. Mr. Dwyer apparently felt no compunction over blackening the reputations of several individuals, including Strom Thurmond and Ronald Reagan, by mere hearsay and uninvestigated assertions.

Where is the respect for fair play and truth that Mr. Dwyer so ardently defended regarding the Goldmarks and allegations of Communist sympathies? Did Mr. Dwyer fail to understand the lessons of his own book? Doesn't he see that he is guilty of the same type of reckless publication of defamatory statements that he found so censurable regarding the Goldmarks? Apparently.

I believe that Mr. Dwyer displays in "The Goldmark Case" evidence of a closed legal mind hostile to persons who possess a conservative political philosophy. His book raises concern over whether he could give a fair hearing to a case in which one of the parties was Senator Strom Thurmond or others identified as a political conservative.

Mr. Dwyer's ridicule of fundamentalist religion on page 23, for instance, raises doubt as to whether he could adjudicate fairly free exercise or establishment clause claims under the first amendment. He quotes with undisguised disapproval Strom Thurmond's descrip-

tion between communism and anti-communism as, quote, "basically a fight between the believers in a Supreme Being and the atheists."

Further, many political conservatives would enter the courtroom with a fear that Mr. Dwyer was biased against them because of Dwyer's harsh, defamatory, unverified statements regarding right wingers in "The Goldmark Case." Mr. Dwyer's rulings might lack the appearance of justice in politically controversial cases because of his pronounced political prejudices. Yet the appearance of justice, as Felix Frankfurter reminded, is essential to justice itself.

Impartiality is the hallmark of the American system of justice. I am uncertain whether Mr. Dwyer is capable of this cherished attribute of a Federal judge.

Thank you, Mr. Chairman.

[The statement of Mr. Fein follows:]

STATEMENT OF BRUCE FEIN*

VISITING FELLOW

THE HERITAGE FOUNDATION

REGARDING THE

NOMINATION OF WILLIAM L. DWYER

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

BEFORE THE SENATE

JUDICIARY COMMITTEE

October 22, 1987

*The statement reflects the views of Mr. Fein, not necessarily those of the Heritage Foundation.

Mr. Chairman and Members of the Committee:

I am grateful for the opportunity to testify regarding the nomination of William L. Dwyer to the United States District Court for the Western District of Washington. My knowledge of Mr. Dwyer stems soley from his 1984 authorship of the book The Goldmark Case. But it raises questions as to whether Mr. Dwyer is endowed with the intellectual tempermant imperative for the fair administration of justice.

Mr. Dwyer represented plantiffs John and Sally Goldmark in a celebrated libel suit in the early 1960s. In conjunction with an impassioned political campaign for state office in Washington, incumbent representative John Goldmark, a liberal Democrat, was attacked as a communist or communist sympathizer through innuendo and guilt by association. His wife, Sally, was a former member of the Communist Party of the United States. Both suffered reputational injury because of unsubstantiated charges.

As counsel for the Goldmarks, Mr. Dwyer richly appreciated the unfairness emanating from uncorrborated defamatory charges or suggestions of communism fastened on liberal members of the Democratic Party. At p. 51 of his book, Dwyer denounces the use of "the old smear technique of talking around the issue and mixing truth with falsehood to imply the victim's guilt without forthrightly charging it."

On p. 128, Mr Dwyer recognizes the unfairness of publicly identifying and stigmatizing individuals with a Communist label without the right of reply afforded by the judical process. On pp. 168-169, 195, Mr. Dwyer recounts the unfairness of summary punishment of a person for beliefs, not action, by defamatory assertions of communist sympathies or mere membership in an association. He quotes with approval the statement that "Guilt by association merely strengthens the hands of the agitators in their attacks upon the infringements of civil liberties." And at pp. 166,168-169,203, Mr. Dwyer denounces the use of stigmatizing assertions not subject to cross-examination to defame individuals.

But in The Goldmark Case, Mr. Dwyer is guilty of the identical smear tactics he so eloquently denounces when used against the Goldmarks. Beginning on pp. 21-25 of his book, he describes or asserts by innuendo that "radical right" organizations in the 1960s and their members:

> "saw socialism in the [Kennedy] government's call for civil rights legislation, an unbalanced budget, the antipoverty program and Medicare. They saw betrayal in the Peace Corps, the Alliance for Progress in Latin America...They felt threatened by black protest marches and sit-ins demanding integration. Some saw a conspiracy whose agents were everywhere."

Without offering substantiation, Mr. Dwyer labels the John Birch Society, Robert Welch, Dr. Fred Schwartz, Billy James Hargis, The Conservative Society of America, Genreral Edwin Walker, Eddie Rickenbacker, and Senator Strom Thurmond as staunch adherents to "radical right" beliefs, such as the desirability of withdrawal from the United Nations, a belief that flouridated water is a communist plot, and that anticommunism is the force of moral right. Mr. Dwyer continues, without documentation, to insist on p. 23 that "[t]he intellectual fount of the radical right was Harding College, a school run by members of the Church of Christ at Searcy, Arkansas."

Mr. Dwyer by innuendo associates with "hate movements" on pp. 24-27 General Albert Wedemeyer, Admiral Arthur W. Radford, General Charles A. Willoughby, Ronald Reagan, and John Wayne. He further maintains that these and other members of the "radical right had little faith in democracy or time for its processes. It saw communism as an absolute evil which must be destroyed by whatever means came to hand. Thus its believers walked the line of extremism: the conviction that one's enemies are so dangerous, and so hateful, that individual liberties and the time-consuming protection of law and custom must be thrust aside."

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substance accuses them of infidelity to the Constitution , its ethos, and American traditions of tolerance. Mr. Dwyer on p. 29 assails Senator Thurmond as a "natural hero of the far right," a charge he purports to bolster by noting the Senator's support for the First Amendment right of a Forest Service employee, Don Caron, to express controversial views regarding communism in a newspaper column. The United States Supreme Court has held that a government employee is entitled to the exercise of free speech unless it interferes with the discharge of his government responsibilites.

What is dismaying in The Goldmark Case is Mr. Dwyer's failure to offer those defamed as irrational right wingers who promote hate groups opportunities to answer his grave allegations. Mr. Dwyer apparently felt no compunction over blackening the reputations of several individuals - including Strom Thurmond and Ronald Reagan - by mere heresay or uninvestigated assertions. Where is the respect for fair play and truth that Mr. Dwyer so ardently defended regarding the Goldmarks and allegations of communist sympathies? Did Mr.Dwyer fail to understand the lessons of his own book? Doesn't he see that he is guilty of the same type of reckless publication of defamatory statements that he found so censurable regarding the Goldmarks? Apparently not.

I believe that Mr. Dwyer displays in The Goldmark Case evidence of a closed legal mind hostile to persons who possess a

conservative political philosophy. His book raises concern over whether he could give a fair hearing to a case in which one the parties was Senator Strom Thurmond or others identified as a political conservative.

Mr. Dwyer's ridicule of fundamentalist religion on p. 23, for instance, raises doubts as to whether he could adjudicate fairly free exercise or establishment clause claims under the First Amendment. He quotes with undisguised disapproval Strom Thurmond's description of the battle between communism and anticommunism as "basically a fight between the believers in a Supreme Being and the atheists."

Further, many political conservatives would enter the courtroom with a fear that Mr. Dwyer was biased against them because of Dwyer's harsh defamatory unverified statements regarding "right wingers" in The Goldmark Case. Mr. Dwyer's rulings might lack the appearance of justice in politically controversial cases because of his pronounced political prejudices. Yet the appearance of justice, as Felix Frankfurter reminded, is essential to justice itself.

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Excerpt from Dwyer's book,
The Goldmark Case

backer, the World War I air ace, who favored withdrawal from the United Nations and the erection of a monument to Senator McCarthy.

Fundamentalist religion ran deep in the movement. Believers saw the world in terms of sin and salvation, communism as the devil's way, and anticommunism (a notably vague term) as the force of moral right. "This war we're in," said Senator J. Strom Thurmond, "is basically a fight between the believers in a supreme being and the atheists."

The war would admit of no compromise. Indeed, the devil's strength had been fostered by compromise—by the country's departure from self-reliance, thrift, and uncompromising virtue. The slackening of sexual taboos and the growth of the national debt, no less than "softness" in dealing with Russia, were seen as pushing the country toward the abyss. Even the flouridation of water was perceived as a communist plot.

The intellectual fount of the radical right was Harding College, a school run by members of the Church of Christ at Searcy, Arkansas. Harding produced and distributed great quantities of literature and films through an agency called the National Education Program. Its president claimed the program's materials reached twenty-five million people a year. Harding's best-known product was a one-hour film entitled *Communism on the Map*. The film aimed to awaken Americans to their supposed peril, and its showing became a rallying point and recruiting device across the country. It portrayed a world at the communists' mercy. The following are excerpts from its sound track, which accompanied alarming pictures of alien tyrants and a red tide spreading over the globe:

> Communism is strong within the United Kingdom. . . . Scandinavia, with strong socialist parties in control, could probably offer very little real resistance if the com-

Senator LEAHY. Thank you. And we are finished within 1 minute of the time, and I compliment you all on that.

Dr. Vangor, do you know William Dwyer?

Ms. VANGOR. No.

Senator LEAHY. Have you ever met him?

Ms. VANGOR. No.

Senator LEAHY. Have you ever tried to discuss with him his views on child pornography or the book, "Show Me?"

Ms. VANGOR. No.

Senator LEAHY. Are you familiar with his legal career?

Ms. VANGOR. Somewhat. Not broadly.

Senator LEAHY. Do you know his stature or reputation in the local community?

Ms. VANGOR. It depends on which segment of the local community. I can submit to you several thousand signatures of Washington State citizens who signed petitions we circulated in the State last year, opposing his nomination.

I can tell you that the Republican party platform last year opposed his nomination. So everybody in the community does not support the nomination.

Senator LEAHY. President Reagan apparently does, because he nominated him, is that a fact?

Ms. VANGOR. Well, that's why we're sitting here.

Senator LEAHY. Do you know any of the work he has done on behalf of children victims of crime?

Ms. VANGOR. I know the work that has been attributed to him, but I am more interested, of course, in the work I believe—and can document—he has done, which is, in our view, harmful to children.

Senator LEAHY. Would you think that the work he has done on behalf of children victims of crime—you say, attributed to him—do you think that the work that's been described in these hearings is not factual?

Do you think the people who have testified under oath are not telling the truth?

Ms. VANGOR. I'm not aware of a great deal of detail on what, exactly, he did.

Senator LEAHY. Mr. Taylor, do you know William Dwyer?

Mr. TAYLOR. No, Sir.

Senator LEAHY. Have you ever met him?

Mr. TAYLOR. No, sir.

Senator LEAHY. So you've never tried to discuss with him his views on child pornography or the book "Show Me?"

Mr. TAYLOR. No.

Senator LEAHY. Are you familiar with his legal career?

Mr. TAYLOR. Only from the record of the hearing from September 11th.

Senator LEAHY. Are you aware of any work he has done on behalf of children victims of crime?

Mr. TAYLOR. I am aware that he was retained by a parents' group to help shut down an establishment in Seattle that was providing drugs and allowing illicit sex among children, and I certainly understand the parents' gratitude to Mr. Dwyer for that kind of activity. I wonder why somebody didn't think of doing that or hiring him years before.

But I also am aware that, though I'm not in possession of facts to prove it, but that he was asked to draft a, what in most States we call "harmful to minors law," similar to the one they may have in Vermont and other States that you might be familiar with. In Washington it's called an erotica statute.

It is very much like a statute that has been promulgated in a lot of States in the country, and passed in maybe 10 or 12 States, including Pennsylvania and some major States.

They require civil injunction actions against a distributor before you could prosecute somebody for providing harmful material to minors, and giving it a definition that was the equivalent of an obscenity test. And, not only that, an obscenity test that still tougher to prove for children than the obscenity test that is for adults.

So to the extent that that was worked for children, I think that he passed a statute that made it almost impossible for the prosecutors to enforce. Not impossible, but still pretty difficult.

Senator LEAHY. So you're saying that the State legislature of Seattle, the State legislature of Vermont and the other States that have passed this law, must have been led down the garden path?

Mr. TAYLOR. No doubt about that. And many of the States have repealed the law, as Pennsylvania did, and even Vermont changed theirs to an obscenity statute, and even that is less restrictive on the government's protection of the children than the original bill that went around.

And I might add, and I don't know whether or not this is the case in Mr. Dwyer's situation, but it was endorsed by the ACLU, and it went around in the late 1960's and early 1970's.

Senator LEAHY. Do you feel the legislature in Vermont is not concerned with child pornography or child abuse or any of those areas?

Mr. TAYLOR. I think that the legislature in Vermont, because they did pass a child pornography law, is concerned. I did go to Vermont and testify on that bill.

I think that the legislature in Vermont, by refusing to pass an obscenity statute, is giving up one good tool they could use to prevent children from being abused, and to prevent child pornography from being fostered in Vermont, which it has become—kind of a playground for pedophiles—and I think that there is more that they could do.

Senator LEAHY. Did you say that Vermont has become a playground for pedophiles? I may have misunderstood you.

Mr. TAYLOR. Oh, yes, Senator, and maybe that would be a good subject of hearings. Vermont has, for maybe the last 10 years or so, been a favorite place for a lot of the molesters from some of the States like New Jersey and New York and Massachusetts and Connecticut.

And the reason was, for a long time, was that they did not have any child pornography law until just recently.

Senator LEAHY. So we're sort of a magnet State for pedophiles, is that what you're telling me, Mr. Taylor?

Mr. TAYLOR. That is exactly the case, because you did not have any law that would prohibit the production or the use of child pictures in Vermont, that's where they went. It was illegal in New York, and that——

Senator LEAHY. That's fascinating. As soon as we get a chance to recess I'll call the Commissioner of Public Safety and alert him to this fact.

Mr. TAYLOR. They know. And as a matter of fact we had a child pornography training seminar in Rutland this summer. There were prosecutors and police from all over the State, and they are increasing their enforcement efforts. There is a law on the books now, and they are starting to enforce it.

But they do find that there is a lot to enforce.

Senator LEAHY. Do you think they are doing a better job now?

Mr. TAYLOR. Oh, yes, Sir.

Senator LEAHY. I'll make sure they know that you're feeling better toward them.

Mr. Fein, have you met Mr. Dwyer?

Mr. FEIN. As my opening paragraph of my statement indicates, my comments stem solely from reading the book that Mr. Dwyer published in 1984.

Senator LEAHY. Does that mean that you have not met Mr. Dwyer?

Mr. FEIN. Yes, it does.

Senator LEAHY. Thank you. Are you familiar with his legal career? Other than as you have testified here today.

Mr. FEIN. Generally speaking, no.

Senator LEAHY. Do you know of work he has done on behalf of children victims of crime?

Mr. FEIN. No, Sir.

Senator LEAHY. The committee received information in its last hearing on the nomination that the book, "Show Me," is kept in collections of major libraries across the country, including the Library of Congress, the public libraries of New York, Chicago, Minneapolis, Dallas, San Diego, Los Angeles, San Francisco and Boston.

Mr. Taylor, are any of these libraries breaking the law by having this book?

Mr. TAYLOR. They are breaking the law, I think, if they do two things. One, under Federal law they would have to place the book in interstate commerce or in the mails, and that is something libraries don't normally do. So they're probably unlikely to be in violation of the Federal statute.

Under State laws, they could be prosecuted for either disseminating obscenity or materials harmful to minors, if they gave it to children; or could be prosecuted or subject to civil actions under the child pornography laws.

I understand that there have been some court cases on "Show Me" back in 1975, 1976, 1977, under the obscenity laws. But those were not under the present child pornography laws that don't provide that defense for value, which the courts then found might be there.

Senator LEAHY. The libraries I have referred to are in the States of New York, Illinois, Minnesota, Texas, California and Massachusetts. Under those State laws, could any of those libraries be prosecuted for having the book in their collections?

Mr. TAYLOR. Well, for instance in California, as in Ohio and some other States, there is an exemption for libraries, and schools and churches and universities.

In some other States, like Washington and Arizona, there is no such exemption, so libraries are more subject to it.

In Texas, for instance, like in Arizona and Minnesota, Florida, Illinois, Ohio—and there are 10 States—that have a possession statute. It says no person, period, shall possess any such explicit pictures of minors.

Senator LEAHY. So they're breaking the law in Dallas? If, indeed, they have the book as our hearing indicated?

Mr. TAYLOR. They could be breaking the law in Dallas.

Now, for instance, we had cases in Cleveland when I was a prosecutor there—and as you may know, I'm a Vermonter, so I went to Cleveland as a foreigner—but when we had convicted defendants' appeals affirmed, we gave materials to our Cleveland Public Library to keep in safekeeping, so that people, if they wanted to know what kinds of materials had been found illegal, they were there.

So the prosecutors are not likely to prosecute a library for having it in their collections. They might very well challenge the library for providing it to the public, or letting it reach minors.

Senator LEAHY. Do any of the libraries in Arizona have it, to your knowledge?

Mr. TAYLOR. Not that I know of, Senator.

Senator LEAHY. You're living there now, is that correct?

Mr. TAYLOR. I do live in Phoenix now, yes.

Senator LEAHY. According to the record the American Library Association has provided for us, there have been quite a few unsuccessful efforts around the country to have "Show Me" removed from the library collections.

These library boards then retained—I'm not sure I understand it. Are they or are they not breaking the law? Let's take Federal law.

Mr. TAYLOR. Federal law, like I said, requires that material to be illegal, or to be prosecuted, must cross a State line in the process to get there.

Senator LEAHY. Wasn't this book published outside this country?

Mr. TAYLOR. No, it was published actually in the United States. St. Martin's Press did publish it in New York City.

Senator LEAHY. So let's just take it outside of New York State—it would have had to cross the State line to get there, wouldn't it?

Mr. TAYLOR. Yes, but the law now says, if you cross the line now or mail it now. So if the library had it before 1984 or 1978, either one of those child pornography statutes, they would have not broken the Federal laws, as long as they don't distribute it now.

State law is somewhat different, and of course that's different from State to State. So some of the State libraries could be found breaking the law, or subject to injunction action, which is more likely what a prosecutor who was going to challenge this would do.

Senator LEAHY. Are you aware of any such injunction actions being brought today around the country on this book?

Mr. TAYLOR. No, and I think one of the reasons for that, Senator, is that most of the libraries who have had the public outcry, or a challenge brought, have taken it off the open shelf where it sat for

years and was provided to whomever wanted it, child or adult, and have put it in selected or restricted collections.

Senator LEAHY. Has your organization been involved in any such injunctive, or other, types of legal actions against the book?

Mr. TAYLOR. Not against "Show Me." Although we have seen and attended seminars and dealt with how the book "Show Me" is used by pedophiles in connection with investigations by police departments.

Senator LEAHY. Is it your understanding that this book was on an open shelf in Seattle?

Mr. TAYLOR. As far as the testimony or the allegations of citizens in Washington, up until a few years ago it was made available to the general public, whoever wanted to get it.

Senator LEAHY. At the time that Mr. Dwyer wrote his opinion, was it your understanding that it was on an open shelf?

Mr. TAYLOR. From what I've heard, that's conflicting. The library says that it is on restricted reference; some of the citizens said that they could go in there and get it and check it out or copy it. So, depending on what you mean.

Senator LEAHY. Would you accept my representation that the committee was told that at the time of that opinion it was not on an open shelf?

Mr. TAYLOR. I understand the committee has been told that, but I know that there are people in Washington who say it's not so—that they could go in there and get it.

Senator LEAHY. If the book is illegal does it make an awful lot of difference whether it's on an open shelf or not?

Mr. TAYLOR. I think it makes some difference. I think that the prosecutors are obviously going to show more deference to a library than an adult book store or pedophile.

And I think that if a library were not defending a book as a wonderful, educational book, but were saying, in effect, this is an example of child pornography and it is only going to be made available to researchers, law enforcement agencies and persons under supervision so they can't go copy it and take it out into the community, that prosecutors wouldn't consider that something to challenge, they would exercise their discretion, as you know, having been a prosecutor, and not touch that.

Just like we wouldn't, according to the *Ferber* decision, go after medical textbooks. And I don't think "Show Me" is a medical textbook. It's not kept by libraries for education and libraries don't engage in educational activities that would have classes.

Senator LEAHY. Do you feel that the *Ferber* decision is wrong, that we should go after medical textbooks?

Mr. TAYLOR. Of course not.

Senator LEAHY. Okay, I just wanted to make sure.

Dr. Vangor, the Seattle library board decided to keep "Show Me" in its collection about 2½ years ago, as I recall, despite your group's calls for removal. Is that correct?

Ms. VANGOR. Yes.

Senator LEAHY. Why didn't you file a lawsuit, and get the matter decided in court one way or the other, once and for all?

Ms. VANGOR. Well, I guess because, first of all, we think that law enforcement is the job of law enforcement, and we are a grassroots

organization. We would have to raise a lot of money to go to court, which still is, I suppose, an option.

We felt that it was the duty of prosecution to enjoin them from distributing this book, and I will add, of course, that it is available to anyone, to be copied.

Senator LEAHY. I wondered if we could just keep on that point. Did you seek, for example, a group like Mr. Taylor's, who might, on a pro bono basis, bring a lawsuit for you?

Ms. VANGOR. No. We have discussed with Mr. Taylor's group the possibility of bringing a private suit, and we may yet choose to do this.

Senator LEAHY. What did they tell you when you discussed this with them?

Ms. VANGOR. That we could do it. And we said, fine, maybe we'll do it, if we can't persuade a prosecutor to bring this case.

At the same time, we decided as an organization to use this for its educational value—use the issue for its educational value in an effort, ongoing, to improve the State laws dealing with child pornography.

Our child pornography statute today falls short of the Federal guidelines in a couple of important respects, and the State harmful to minors law, which Mr. Dwyer evidently drafted, is also very faulty.

So, in fact, in the past year, we formed the Washington State Pro-Child Committee to protect children from sex industries, wherein we joined with a number of other organizations in the State working with child prostitutes and run-aways to lobby for such legislation.

Senator LEAHY. Dr. Vangor, if you don't mind, but I just don't want to intrude on Senator Thurmond's time.

If we could just go back, though, to my question.

Ms. VANGOR. Sure.

Senator LEAHY. And direct your answer to that.

If Mr. Taylor's organization was available to you for legal work, that wouldn't cost you money. Why not bring the suit?

I mean, you suggested that you want to make an object lesson of this. Wouldn't it be a far better object lesson if, one, you brought a suit—and won—and then that would be available to prosecutors; or, secondly, if you brought a suit and didn't win, you were to be able to point out where the laws might be changed?

Or thirdly, do you by not bringing a suit just create an issue you can talk about, where nobody could ever say how it could be settled?

Ms. VANGOR. Pardon me? What was your last point?

Senator LEAHY. Or by not bringing a suit, you just maintain an issue which never gets settled in the law, one way or the other, but allows people to continuously talk about it and draw whatever conclusions they want.

Which of the three is it, Dr. Vangor?

Ms. VANGOR. It's none of the above. We are not the ACLU, we don't have the kinds of funds, even if Mr. Taylor's group——

Senator LEAHY. Dr. Vangor, Mr. Taylor has said that his organization is available for that. They say right in their legal assistance

program brochure that they direct assistance in prosecution of criminal and civil lawsuits.

I'm sure there are people who would be willing to, on a pro bono basis, help you. Why not bring a suit?

Ms. VANGOR. We discussed this with Mr. Taylor, who was willing to offer his services, but we would still want the services of an attorney in Washington State to do a lot of the local legwork on the case, and we felt that it would not be fair to have anyone work that hard for us for nothing, even their expenses.

And we said, well, let's work on this for a while and raise some money.

Senator, are you saying it is my fault for not suing the library?

I don't want to be made guilty of failing to sue the library to solve a problem which they are causing.

Senator LEAHY. Dr. Vangor, that's not my suggestion. I'm just asking if this has gone on this long, people discussing it, and everybody saying, what if, what if, what if.

If a suit was brought, or prosecution was brought, wouldn't that be the easiest way to determine it?

Ms. VANGOR. It would be one way, and a good way.

I would also add that about the time we began to contemplate this we had other things to keep us busy.

For example, the Washington Library Association attempted to lobby a bill through the State legislature following this controversy which would have exempted them from child pornography law in the State of Washington. This is Senate Bill 3036.

We blocked that attempt. We're just little, average, grassroots people, running around trying to do these things. That took up a lot of our time.

Contending with the nomination of Mr. Dwyer has taken up a tremendous amount of our time.

If I had the budget the ACLU has, I might well have gone ahead and done what you suggest.

Senator LEAHY. So what you're saying is that it was more important to circulate petitions against Mr. Dwyer than it was to go after the book you're most concerned about?

Ms. VANGOR. I believe that's true, because we feel that's it's far more dangerous, in the long run, to have a person of Mr. Dwyer's beliefs and evident readiness to ignore the purpose and meaning of child pornography law sitting in a lifetime court position, than to allow the book to languish in the library for another year or two, yes.

Senator LEAHY. Dr. Vangor, you say a person of Mr. Dwyer's beliefs. Mr. Dwyer, in his testimony, said that what he did was to apply settled law in Seattle in his opinion to the library board, not suggesting his own feelings one way or the other on the book. Law which seems to have been followed in an awful lot of other areas.

Is that wrong, for a lawyer sworn to uphold the law, to render an opinion saying that this, he believes, is a correct interpretation of the law, irrespective of his own feelings?

And, if somebody feels strongly that that law should be changed, might they not seek to change it?

Ms. VANGOR. I believe that he deliberately misinterpreted the child pornography law, State and Federal, giving his opinion. I be-

lieve he spoke as an advocate of the pro-child pornography legalization position advocated by the American Civil Liberties Union, and by the American Library Association.

Senator LEAHY. So you're saying, Dr. Vangor—and I don't want to put words in your mouth, but I want to make sure I fully understand this. Are you saying that Mr. Dwyer is in favor of child pornography?

Ms. VANGOR. I am saying that what he said would protect material which is, in fact, illegal under the law. If he is claiming, as Mr. Taylor has said, that there is an educational value exemption for child pornography, Senator, we will be back to the pre-*Ferber* days of 1981.

Senator LEAHY. Do you think that he is in favor of child pornography?

Ms. VANGOR. He has stated that an exemption exists, which is not present. He can't have it both ways. He cannot be against the idea of child pornography——

Senator LEAHY. Has anybody in Seattle brought a court case which comes up with a result different than what Mr. Dwyer gave in his opinion?

Ms. VANGOR. A month after Mr. Dwyer gave his opinion, a man was convicted for 62 items of possession of child pornography, and "Show Me" was the 62nd item in the collection. The case was upheld on appeal, despite, as I've said already, despite a challenge from the defense attorney to the appeals court saying, when you rule on this case, if you don't acquit my client, you are going to label this controversial book, the center of all this uproar, as illegal material. And that's what they did.

Senator LEAHY. Was that case somewhat different, though. A person accused of pedophilia caught with a number of items, including this, in his possession, for his personal gratification, which I believe was something akin to what the statute says—would that not be somewhat different than a library maintaining the book on its shelves?

Ms. VANGOR. Not under the law, or the Washington Library Association would not have taken the trouble the following year to attempt to pass a bill to exempt themselves. They are not exempt. They wanted to be exempt.

As far as the law is concerned, what matters is the character of the material, not who possesses it.

Senator LEAHY. You say they're not exempt, and I'll accept that. Has any prosecutor, or any person in a civil suit, brought an action against this library, or any other library, and had the courts come down with a result different than what Mr. Dwyer said in his legal opinion to them?

Ms. VANGOR. I believe that some citizens in Elmira, New York, are attempting to——

Senator LEAHY. I'm talking about in Washington.

Ms. VANGOR. In Washington State?

Senator LEAHY. Yes.

Ms. VANGOR. I am not aware of anything in Washington State, outside of our particular issue here. I believe that the issue had become—I know for a fact the issue had become quite controversial in Pierce County, Washington.

I mean, I'm not going to speculate whether it would have resulted in a case, but——

Senator LEAHY. But it did not.

Ms. VANGOR. Not so far.

Senator LEAHY. Okay. Thank you.

Ms. VANGOR. And let me just add, since you're pressing me on this, obviously the last thing most prosecutors want to do is to go pick a fight with the public library, have the ACLU and the American Library Association and the media hopping all over them.

Obviously, people would like us to do this for them. Would like us to go out there, spend our money, spend our time, bringing a case in a civil action. And perhaps that will be the ultimate solution, but it is not the ideal one.

Because I don't have a tin star on my chest. I'm not supposed to replace prosecution and law enforcement.

Senator LEAHY. Dr. Vangor, another suggestion, though, might be made. If a prosecutor doesn't bring a prosecution, it's sometimes because the prosecutor either feels the prosecution is not warranted, or the law would not sustain it.

Senator Thurmond.

Senator THURMOND. I just have a few questions, Ms. Vangor.

Do you feel that under the guidelines established in *New York* v. *Ferber,* that the book "Show Me" is child pornography? And if so, how does this book compare with books which have been considered child pornography by the courts?

Ms. VANGOR. Yes, I do. There's nothing much that compares with "Show Me," because as far as I know it's the only book containing photographs of nude children having sex which purports to be educational, in the first place, which was endorsed both by the American Library Association and by the Rene Guyon Society, a pedophiles group whose motto is, "Sex by year eight or else it's too late," which is found on library shelves and advertised in porno magazines, and in the private collections of child molesters.

So it's a very unusual book. I have it on the authority of the best experts I could find, for example, an assistant U.S. attorney, Susan R. Via, in Boston, who was recommended to me as one of the most knowledgeable persons on child pornography in this country.

She is going to write me a letter—I will submit it to this committee. I got her name from John Sullivan, who is the head of the U.S. Customs Child Pornography Protection Service. And she has stated unequivocally there's no question that this book is illegal.

The problem with it being illegal under Federal law is, you have to catch somebody violating Federal law, which to date means they have to be caught mailing it, sending it through interstate transport, or importing or exporting the thing, and all the pedophiles already have it, so they're not doing that.

Senator LEAHY. When Ms. Via's letter arrives we will include it as part of the record. I'm sure that Senator Thurmond would want that, too.

Senator THURMOND. What was that?

Senator LEAHY. She said she has a letter coming from an assistant U.S. attorney.

Senator THURMOND. We'll include it as part of the record.

Ms. VANGOR. I will say for the record that we are expecting a letter from Susan Via.

To expand on this, one needs simply to look at the history of the book "Show Me," which was published and sold in this country until New York State passed a State child pornography law in the late 1970's, one of the first in the country to dispense with the obscenity test requirement for this material, to adopt a new objective standard.

The standard for child pornography rests on two components of proof, which are the age of the victims—the models—and the acts they are performing.

This standard is so objective that, under my State law, a person who has no training in legal matters or in child protection matters, who works in a film lab developing negatives, is held accountable, will be guilty of a gross misdemeanor, which is a crime, for failing to report this material.

And just along the way I should say, I think the average librarian should be expected to be at least astute as the average person who works in a film lab.

That's how objective the law is.

When the child pornography law was passed in New York State, it resulted very rapidly in the landmark decision, *New York* v. *Ferber.* The publisher of the book, as I have provided you with a copy, sent a letter to all booksellers and libraries stating that, because of *New York* v. *Ferber,* I will not publish this book anymore, and he has recently commented again, on the record, that he felt that his book would come under the purview of child pornography laws. It's not published anymore.

Subsequent to *Ferber,* the Senate Subcommittee on Juvenile Justice met in 1982—there is a transcript of an entire hearing which we have provided, on the record.

I mean, you were the people—the same people on the Senate Judiciary Committee are many of the same individuals who were committee members in 1982—that subcommittee sat down to revise the Federal law in light of the landmark *Ferber* ruling, which upheld the constitutionality of a child pornography law, not founded in obscenity law but based on principles of child sexual exploitation.

The publisher of the book, Thomas McCormack, came to the subcommittee in 1982, and said, on the record, "yes, there are children in this book performing assorted sex acts; yes, they go beyond mere nudity and touching; we think that's okay, we think we have a wonderful educational book here—please don't change Federal law, so that I will not be able to sell and distribute this book in States that don't have a child pornography law like New York's".

He wanted an educational exemption. He wanted the very loophole Mr. Dwyer claims exists, and the outcome was the Federal Child Protection Act of 1984, which contains no such loophole.

It seems to me that that's pretty good grounds for assuming that the book is child pornography. Child pornography is pictures of kids performing sex acts. It is crime scene material.

Somebody had to take those kids, put them through their paces, order them, or encourage them, to fondle one another's genitals, to

perform acts of intercourse, to perform rectal penetration, for the camera.

Hundreds of pictures were taken which were never published in this book. That's child pornography.

Senator THURMOND. Dr. Vangor, would you share with the committee any evidence or examples of adverse effects that books such as "Show Me" have on children?

Ms. VANGOR. Well, we know from——

Senator THURMOND. Once you've covered it, make it brief, would you?

Ms. VANGOR. Yes, very briefly. I mean, we could inundate you, and we are not going to do that. We are providing testimony from people with hands-on knowledge. That's why we contacted all of the experts in the country.

Dr. Ann Burgess, who wrote Child Pornography and Sex Rings; the National Center for Missing and Exploited Children have provided you a letter written by Deputy Director Rabun; the Adam Walsh Foundation; Toby Tyler, an internationally known expert on child pornography, is providing, or has provided material for you.

The Los Angeles Police Department also. I mean, it is so well known and documented that this book is used by pedophiles.

And as Kenneth Lanning from the FBI once told me, and he is again one of the national experts—he's a supervisory special agent—I included a letter from him in my evidence to you—he stated, "If you're going to molest kids," he said, "you should really invest in the hardcover version of this book. Because you show a little child a hardcover book—especially from a public library, or from a bookstore where it was sold legally—you show a little kid a picture out of a hardcover, authoritative book, children performing sex acts, children smiling and happy, children willing to have sex, children encouraged to have sex," he said. "That's just exactly what a child molester needs. That's what they want."

We have evidence from our own area, where this book was used to molest children. I have provided you with testimony from newspaper clippings. A kid says, "He showed me what was in this book and told me to do that."

That's the classic line.

Senator THURMOND. Ms. Vangor, it is my understanding that you were at the library board hearing when Mr. Dwyer gave his opinion on the book "Show Me;" is that correct?

Ms. VANGOR. I was present at the public hearing where Mr. Dwyer gave his opinion, yes.

Senator THURMOND. Do you have any additional information that you would like to share with the committee regarding this matter?

Ms. VANGOR. Well, first of all, I wish the committee had a transcript or a tape of that very interesting event, where all of the Seattle Library Board members spoke, where the City Attorney of Seattle spoke, and where Mr. Dwyer spoke at length. I wish I had had——

Senator THURMOND. Don't go too fast. Now, who spoke you say?

Ms. VANGOR. All of the members of the Seattle Library Board spoke in turn.

Senator THURMOND. Spoke what?

Ms. VANGOR. Explaining——

Senator THURMOND. Which way did they speak?

Ms. VANGOR. Let me explain the purpose of this hearing. May I do that for a moment?

The library board decided to have a public hearing at the outcome of their deliberations over Show Me. There had been some scandal over these deliberations. They had planned to hold meetings closed to the public, which the Seattle media complained about, and then decided not to have any meetings at all rather than then to have open ones. I have documented this on the record.

The outcome of their deliberations were to be prepared and offered to the public at a public hearing, which occurred on May 3, 1985. Each and every member of the Seattle Library Board spoke. The City Attorney of Seattle, Mr. Doug Jewett spoke. Others spoke, and Mr. Bill Dwyer spoke. And I wish I had had the sense to arm myself with a tape recorder. I didn't know I would have so much trouble getting my hands on this.

But I remember Mr. Dwyer saying, among other things, we have all studied the *Ferber* case. We have studied the law. We are all really quite expert on this now, and we have decided that this book is not child pornography. And he went on to give the remark quoted in the Seattle press, which is:

> The courts would clearly hold that this book is serious in its purpose and that it has real legitimate, substantial value as an educational resource. I don't believe there is a sufficient legal basis under either the Federal law or State statute to justify removing the book from the collection of the library.

[Article follows:]

LIBRARY TO KEEP "SHOW ME" SEX BOOK

(By Ed Penhale)

The controversial sex education book "Show Me" will remain on Seattle Public Library shelves despite a prosecutor's warning that it may violate laws against child pornography, the Seattle Library Board decided yesterday.

The five-member board unanimously decided the book is intended for educational use and is not child pornography.

After the board's unanimous decision, King County Prosecutor Norm Maleng's office said it will announce Monday whether any criminal charges will be filed against library board or staff members for violating a new state law against child pornography.

EXPLICIT PICTURES

Maleng hasn't branded the book as illegal, but has said it is "within the purview" of the law against sexual exploitation of children.

"Show Me." on library shelves for a decade, contains pictures of children engaging in sexually explicit conduct, including masturbation and fondling of breasts, genitals, pubic areas and buttocks. Teen-agers are shown having sexual intercourse and there are pictures of breast feeding and childbirth.

The book, written by Swiss child psychologist Helga Fleischhurer-Hardt, also contains a text that explains to parents how they should use the book to explain to their children everything from puberty to childbirth.

"They're going to regret this," anti-pornography leader Andrea Vangor said of the boards decision. Vangor and a Bellevue-based group called Eastside Citizens for Decency Through Law complained to the board about "Show Me" and then pointed it out to Maleng. Vangor claims the book is pornography and exploits childern.

If Maleng decides to file charges, library board president John C. Cannon may reconsider his position. That would be a whole new "ballgame," he remarked.

The fact that Maleng never stated that the book is illegal helped Cannon vote to retain "Show Me," the Board president said.

Connon said reasonable people may disagree over whether the book is appropriate for the library, but added: "There is absolutely nothing to suggest to me that the book is illegal."

"We, the body that makes the policy decisions, cannot let the radical rhetoric of the right or the limitless liberal left cajole us into those kinds of decisions," Frank Greif told fellow board members.

Michael Kranda, spokesman for Maleng, said no decision to file charges has been made. Under the state law, possession of child pornography is a misdemeanor.

Although the law makes it a felony to distribute such materials for commercial purposes, that part of the law may not be applicable to a library, said Ron Clark, chief criminal deputy prosecutor.

The library board met Thursday in a close-door executive session with Seattle City Attorney Doug Jewett and the board's special legal counsel on the "Show Me" matter, Bill Dwyer.

They voted to retain the book at a public meeting yesterday, where Dwyer said: "The courts would clearly hold that this book is serious in its purpose and that it has real, legitimate, substantial value as an educational resource. I don't believe there is a sufficient legal basis, under either the federal law or state statute, to justify removing the book from the collection of the library."

The American Civil Liberties Union of Washington already had taken a similar position.

Board member Meade Emory said the purpose of "Show Me" is not to serve as a sexual stimulus and, therefore, it does not meet the test for materials outlawed by state and federal laws.

Vangor disagreed. "This issue has been fought in the Supreme Court, in the Congress and in the state Legislature," she said "We have worked out a concept in this country of child pornography. It is that you may not have a minor perform sex acts for the camera for any reason whatsoever."

A photocopied version of the book is available at the education desk of the Seattle library system's main branch. It can't be removed from the library.

Senator THURMOND. Dr. Vangor, I think we have covered most of the questions we have for you. Thank you very much.

Ms. VANGOR. Thank you.

Senator THURMOND. Mr. Taylor, your organization I believe is Citizens for Decency Through Law?

Mr. TAYLOR. Yes, Senator.

Senator THURMOND. Is that your only purpose for existing, to try to provide decency for the public?

Mr. TAYLOR. That is our only issue. We have lawyers on the staff who spend full time helping police and prosecutors enforce and improve existing obscenity and child porn laws.

Senator THURMOND. Now, tell us just why you are here today. Did you come of your own accord? Did you ask to be heard? Or why are you here?

Mr. TAYLOR. I asked to testify. I was requested, by Ms. Vangor, to give a legal opinion, which I did. It started several years ago when the whole "Show Me" thing came up.

Senator THURMOND. Now, do you know Mr. Dwyer?

Mr. TAYLOR. No, I don't, and my only——

Senator THURMOND. You don't know him at all?

Mr. TAYLOR. Don't know him at all.

Senator THURMOND. And you just came to testify because of your organization is interested in decency through law; is that the purpose?

Mr. TAYLOR. And to ask Congress to inquire whether Mr. Dwyer would enforce the laws of Congress the way the Supreme Court interpreted them or whether he would substitute the kind of opinion he gave in the "Show Me" case, which we think is clearly incorrect. So that is the purpose.

Senator THURMOND. You have read his opinion in the "Show Me" case?

Mr. TAYLOR. Yes, Your Honor.

Senator THURMOND. What did you think about his opinion?

Mr. TAYLOR. When I was first asked to look into this, and as Mr. Leahy asked——

Senator THURMOND. Just a minute. I think I have it here.

Now, I believe your organization has been active and involved in the battle against child exploitation, hasn't it?

Mr. TAYLOR. Yes, sir.

Senator THURMOND. Now, would you tell the committee your reaction when you heard that Mr. Dwyer had informed the Seattle Public Library Board, and I quote, "The courts would clearly hold that this book is serious in its purpose and that it has real legitimate, substantial value as an educational resource"? What is your reaction to that?

Mr. TAYLOR. Well, first of all, if that is Mr. Dwyer's personal opinion, I think it is—I don't agree with it. But, as a legal opinion, it does not exist anywhere in either Washington law or Federal law or in the U.S. Supreme Court that educational value or serious purpose has anything to do with child porn laws.

If it is a sexually explicit picture of a minor, it is illegal to distribute it to the public. And therefore, for a lawyer to say it is okay for the library to have child pornography because it has a serious purpose or it is for educational use, is offering an opinion on a defense that does not exist.

And I think that is the whole point, is that he can advocate certain viewpoints for the library and say, I think we can get you off, and that would be okay for a lawyer to say, or I think that the jury wouldn't want to convict you, and that would be okay for a lawyer to say. But, to say to a library, you are not guilty because you have got a defense, and the defense doesn't exist, that seems to me to be kind of an, either an incorrect or an irresponsible advice to give.

Senator THURMOND. Now, Mr. Taylor, in a September 10, 1987 statement which you submitted to the committee you stated, in reference to the opinion rendered by Mr. Dwyer concerning the legitimate value of the book, and I believe these are your words:

> This opinion is directly contrary to the decision on *New York* v. *Ferber* and is only arguably consistent with the separate opinion of Justices Brennan and Marshall that depictions of scientific medical value should be protected by the first amendment.

Now, would you please explain more carefully this statement, and in what manner is Mr. Dwyer's opinion contrary to the *Ferber* decision?

Mr. TAYLOR. In *Ferber* the majority opinion held that the States and the Federal Government could prohibit outright as contraband all pictures of children engaged in sexual conduct or being used to have a lewd exhibition of the genitals. In their majority opinion they discuss whether there should be a serious value or an educational-type exception or defense, and the court declined to do that, saying that such kinds of material would be such a tiny fraction of what we are talking about, there is virtually no case that we can think of where anybody would need to take pictures of children to

make a point like this, but, if there were, and if it was medical or scientific, that could come before the court at another time.

Justices Marshall and Brennan in their concurring opinion in effect say, we think the Court should adopt a serious value or an educational test for child pornography, a defense or an exception. The Court did not do that. They urged that it be done. And what we are saying is that Mr. Dwyer was applying that kind of defense as if there was one, when it had been specifically rejected by the majority.

I don't doubt, you know, or even contest Mr. Dwyer's role as a judge to be an advocate for the client. I mean, role as a lawyer to be an advocate for the client. But, as a judge, he must then back up and follow the Supreme Court.

And, if a library came before him as a judge, would he be willing to say, if the Washington law says that there is no defense for educational and there is no exception for libraries, and the facts were that the library was giving it out to the public—would he be willing to say to the library, his former client, they got you on this one. Technically you are in violation. It is pictures of kids. They are doing sex. There is no defense. There is no exception for libraries. You have got to stop doing it.

Would he be willing to do that? And that is the question I think that has been begged by his opinion that there is a defense of child porn that isn't in *Ferber* and isn't in the Washington law.

Senator THURMOND. Thank you very much.

Mr. TAYLOR. Thank you, Senator.

Senator THURMOND. Mr. Fein, you have reviewed the book written by Mr. Dwyer. Does the tone that is established in the book concern you? And, if so, why?

Mr. FEIN. Yes, Mr. Senator, I think the book is of concern to me because it seems to display almost a moral obtuseness or legal obtuseness regarding the necessity to protect against reckless, defamatory allegations when they are hurled against in this case a liberal Democrat, which I agree with, but the author then turns around in the book itself and makes similar allegations with regard to so-called members of the far right, including yourself, Mr. Senator, without any supporting data.

He states, and here I am quoting right from his book: "Members of the far right," he says, "had little faith in democracy or time for its processes." He continues to assert, "It saw"—"It," whatever that is, "saw communism as an absolute evil which must be destroyed by whatever means came to hand. Thus," he says, "its believers walk the line of extremism. The conviction that one's enemies are so dangerous and so hateful that individual liberties and the time-consuming protection of law and custom must be thrust aside."

That is, he is basically saying that members of the far right, which include you, are willing to thrust aside the protection of law and custom in order to achieve the ends. Now, that is a rather reckless allegation. There is not even a single footnote in these pages where he makes these assertions and characterizations of the far right.

And Mr. Dwyer is well aware, because he does an eloquent job I think in showing how unfair it was to the Goldmarks to be painted

as Communists or Communist sympathizers with the vague assertions made by their political opponents without any substantiation. He knows the harm that is occurring and yet he indulges in it himself.

Another example of that comes into play, Senator, when he comments on your defense of the right of a Government employee, in this case Mr. Don Caron, to exercise his free speech rights and not be punished or discharged from the Government. Now, it is a time-honored rule in the U.S. Supreme Court, going back as far as 1968 in the *Pickering* case, and Mr. Dwyer is authoring this book in 1984—this is, you know, almost 20 years after the *Pickering* case—that a Government employee is possessed with a first amendment right to exercise free speech, unless it would interfere with his Government responsibilities.

And yet, Mr. Dwyer paints your defense of Mr. Caron as somehow showing that you are believer in the radical right, instead of being a defender of the first amendment. And it is that kind of double standard that is in the book itself that raises in my mind a question of whether or not he possesses the intellectual temperament to give a fair and open-minded evaluation of litigants who come before him but don't have the same political philosophy that he likes.

Senator THURMOND. I want to ask each of you, are you coming up here just because you are trying to help the public and to protect the public good or you do you have an axe to grind in any way, shape or form?

Dr. Vangor?

Ms. VANGOR. I have come to tell the truth about an issue which we feel is of paramount importance. We feel that if a viewpoint on child pornography law, a distortion of child pornography law such as that propounded by Mr. Dwyer becomes current in the courts of this country, children will be even more at risk than they are today for the exploitation of child pornography by adults who are greedy, who are conniving, who will trick them, force them, induce them to perform sexual acts, and dress it up with an educational text. We will be right back where we were some years ago in this country where child pornography was sold over the counter in cities like mine.

I don't want to go back to that. I am here to try to forestall such a catastrophe.

Senator THURMOND. Mr. Taylor?

Mr. TAYLOR. Senator, if the candidate, Mr. Dwyer, is willing to do what I think the committee should ask him to do——

Senator THURMOND. Speak louder.

Mr. TAYLOR. If Mr. Dwyer is willing to do what we think the committee should ask of him, which is to decide now whether he will take the judge—the oath of a judge and be in favor of enforcing the laws that he attacked as a lawyer, meaning that everybody knows that Mr. Dwyer is, quote, "liberal" or he is defense oriented and has been a lawyer for the ACLU and has defended more restrictions on government, and that is okay for a lawyer to do. But this committee must say, even though you are very liberal, are you willing to enforce the law as you see it?

This committee rejected Judge Bork because they did not believe, because he was too conservative, that he would follow the laws the committee wished. I think they have to ask the same question here. Do you believe Mr. Dwyer will defend as a judge what he attacked as a lawyer, and will he, in effect, put aside any personal notions he may have that there should be a defense that child porn should be an exception or there should be value exceptions, and enforce the law as it exists today?

And, if he can't do that, I don't think he can be a Federal judge.

Senator THURMOND. Mr. Fein, I don't know whether we brought out anything about your organization. For the record, you might just tell what the Heritage Foundation stands for.

Mr. FEIN. The Heritage Foundation would be popularly described as a conservative "think" tank. It publishes numerous position papers on matters before Congress for the executive branch, hold seminars. It is a non-profit organization, and the president is Mr. Ed Fulner.

Senator THURMOND. I think that is all the questions I have, Mr. Chairman.

[Aforementioned material follows:]

Cradle-to-Grave Intimacy

Some researchers openly argue that "anything goes" for children

The preachings of sexologists on childhood have not changed in decades: sex education in the schools is good; guilt, repression and punishment for masturbation are bad. Now, however, a disturbing idea is gaining currency within the sex establishment: very young children should be allowed, and perhaps encouraged, to conduct a full sex life without interference from parents and the law.

The idea is rarely presented directly—most of the researchers, doctors and counselors who believe it have the wit to keep a low profile and tuck the idea away neatly in a longer, more conventional speech or article. The suggestion comes wrapped in the pieties of feminism (children, like women, have the right to control their own bodies) and the children's rights movement (children have rights *vs.* their parents). According to the argument, children are sexual beings who need to develop skills early in life. The child has a fundamental right, says Mary S. Calderone, head of the influential Sex Information and Education Council of the U.S., "to know about sexuality and to *be* sexual."

In general, these sexologists consider Freud's "latency period"—a time of low sexual interest from about age four to puberty—to be a myth imposed by a prudish society. Some of the sexologists are fond of pointing out that the body's sexual response system begins early—infant boys get erections and the vaginas of infant girls lubricate. Apparently the researchers believe that such things constitute a powerful argument for child sex. Even stranger is the theory that children will grow up askew if they do not have early sex. As Sexologist John Money of Johns Hopkins wrote in *The Sciences* magazine: "It is almost certain that human beings, like the other primates, require a period of early sexual rehearsal play." Another refrain is that sexual liberation cannot be withheld from the young. "Western society has undergone a revolution in sexual values but has tried to apply it exclusively to adults," Anthropologist Richard Currier wrote in *Human Behavior*, "and this rather arbitrary restriction is simply not working."

One of the more intellectually disheveled of the new apostles of child sex is Family Therapist Larry Constantine of Acton, Mass., whose views sound like a satire on how to raise children. Says he: "Children really are a disenfranchised minority. They should have the right to express themselves sexually, which means that they may or may not have contact with people older than themselves." What about older men preying on four- and five-year-olds? Constantine would argue that if children were properly educated about sex, a child who did not want sex could always say no.

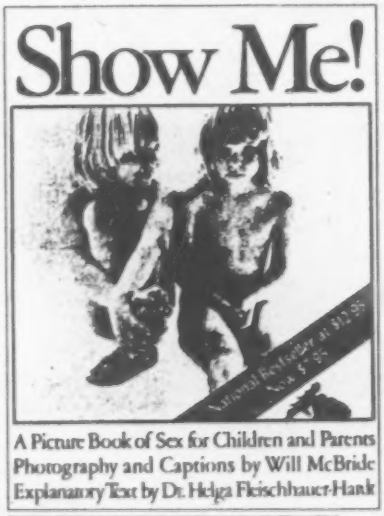
Almost all sexologists publicly state that they oppose adult-child sex, but a number of researchers maintain that such sex is basically harmless to the child. Norwegian Psychologist Thore Langfeldt says that early sexual stimulation of children, including the masturbation of infants by adults in some primitive cultures, "definitely does not seem to harm the child." Money claims that a youngster's "rehearsal play" with adults "affects them beneficially." Wardell Pomeroy, co-author of the original Kinsey reports, says incest "can sometimes be beneficial" to children. Dutch Psychologist Frits Bernard, author of numerous articles and books on pedophilia, says adult-child sex is basically innocent and adds that the children he has studied "are not more neurotic than the average Dutchman." One conventional argument is that the fuss raised by parents after adult-child sex—and not the sex itself—is what harms the child.

Another common theme is that adult-child sex must be judged by the quality of the relationship involved. Sociologist Floyd Martinson of Minnesota's Gustavus Adolphus College thinks adults involved in affectionate sexual relationships with tots should not go to jail. "Intimate human relations are important and precious," he feels. "I'd like to see as few restrictions placed on them as possible." Psychologist Douglas Powell of the Harvard Health Service says: "I have not seen anyone harmed by this so long as it occurs in a relationship with somebody who really cares about the child."

The fact that such views fall just short of a manifesto for child molesters' lib is not lost on pedophiles. Valida Davila of the Childhood Sensuality Circle, a far-out sex group in San Diego, welcomes the new writing: "We believe children should begin sex at birth. It causes a lot of problems not to practice incest." Pedophile groups have learned to pick up the rhetoric of the sexologists and children's rights advocates. David Thorstad, a homosexual and militant spokesman for the pedophiliac movement, says he is fighting for "the rights of children to control their own bodies." Replies Nancy Walker, a lesbian columnist: "Let Thorstad and his confreres at least say what the real issue is: that they want to [copulate with] children. Prepubescent children are not taboo because this is a sex-negative society, but because they can be physically hurt and *may* be psychologically injured as well by sexual intimacy with adults."

Unfortunately, few responsible child experts have reacted even that bluntly so far to the radical writing on child sex. One who has is Child Psychiatrist Leon Eisenberg of Children's Hospital Medical Center, Boston: "Premature sexual behavior among children in this society almost always leads to psychological difficulties because you have a child acting out behavior for which he is not cognitively or emotionally ready." People who think small children are capable of making free decisions about sex with adults, he adds, "are full of crap."

In the world of sexology, prestige usually comes from attacking taboos and repression, not from assessing the psychological damage of the ideas unleashed. And few sexologists are trained to assess such damage. Psychotherapist Sam Janus, author of a new book, *The Death of Innocence*, says that people who were seduced early in life "go through the motions of living and may seem all right, but they are damaged. I see these people year after year in therapy." U.C.L.A. Psychiatrist Edward Ritvo also says that much of his work is with children who have been involved in catastrophic sexual situations. His conclusion: "Childhood sexuality is like playing with a loaded gun." —*By John Leo. Reported by Ruth Mehrtens Galvin/Boston*


Show Me!
A Picture Book of Sex for Children and Parents
Photography and Captions by Will McBride
Explanatory Text by Dr. Helga Fleischhauer-Hardt

Cover of the controversial children's book *Show Me!*

[From the Bremerton Sun, June 6, 1986]

JUDGE UPHOLDS CONVICTION OF MAN WHO POSSESSED CHILD PORNOGRAPHY

(By JoAnne Marez)

A Bremerton man's conviction in district court last year for possessing child pornography, including photos of an 8-year-old child engaging in sexual activity with him, has been upheld by a superior court judge.

Hugh Marshall, 52, will have to serve his county jail term, unless he decides to appeal Grays Harbor Superior Court Judge Robert Shorett's decision of this week.

Marshall's attorney, Michael Klemetsrud of Port Orchard, said Marshall has 30 days in which to seek review by the state Court of Appeals in Tacoma. Meanwhile, the jail sentence has been stayed.

"I haven't talked to my client but we will discuss the issue of appeal," Klemetsrud said yesterday.

Shorett's written decision was about a paragraph long and did not detail his reasons for upholding the conviction by Kitsap County District Court Judge James Riehl. Shorett served as a visiting judge and heard arguments by Klemetsrud and Deputy Prosecutor Lucretia Fishburn on the constitutionality of the law.

Riehl sentenced Marshall to a year in the county jail and fined him $5,000 for the offense, a gross misdemeanor, then suspended 185 days of the sentence and $4,300 of the fine. Marshall served 19 days in jail before posting a $750 appeal bond.

The Marshall case came to light in a rather unusual manner, according to Prosecutor Dan Clem. Marshall allegedly had taken photographs of an Oregon woman in the late 1970s, when she was a child and lived in Kitsap County. She finally told her parents, friends of Marshall's, and they came to Bremerton and demanded—and were given—the photos of their daughter. They subsequently took the material to Bremerton police.

An investigation into the alleged sexual abuse was launched but, said Clem, the statute of limitations on felony charges had run out.

Prosecutors eventually filed the misdemeanor charges against Marshall, based on a vast array of pornographic materials found in his possession. The majority of the items, including photographs taken by Marshall, involved children. The 62 exhibits admitted at the hearings included dozens of magazines featuring children in sexually explicit poses, along with photos of Marshall and children he knew.

The case drew the attention of then-Sen. Barbara Granlund, who was concerned about the fact that a sex abuse case could not be pursued because the five-year statute of limitations had run out on the case. Clem said Sen. Granlund sponsored legislation that eventually resulted in the statute of limitations being extended to seven years.

"It was too late for this case," Clem said, "but we were pleased that we have a longer time period for other cases."

When the misdemeanor charges were filed against Marshall, Klemetsrud sought a dismissal, arguing to the court that law violated First Amendment guarantees and amounted to "thought control."

Marshall admitted the materials were his but testified they were for his personal use alone and had never been out of his house. He had acquired the material in the late 1970s, he said, which is when the photos of the young children and Marshall were taken.

Among the items introduced into evidence was the controversial sex education book, "Show Me," which contains graphic illustrations of children involved in sexual activity.

"When we start telling people what they can read and what they can look at and what they can think, then there are no rights" under the constitution, Klemetsrud argued.

He said there was no evidence Marshall shared his pictures with anyone else or did anything but possess them. They were only for "Mrs. Marshall's interests, whatever those interest may be."

But Miss Fishburn argued that the case involved ". . . much more than just saying First Amendment."

She told the court that the protection of children is a compelling state interest and that a New York case involving child pornography cited "study after study after study" showing participating in child pornography is harmful to children. Child pornography should remain an exception to the classic free speech protection, she argued.

After briefings and arguments, Riehl ruled in Miss Fishburn's favor, noting that "safeguarding the physical and psychological well-being of a minor is compelling."

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"Just as advertising and selling of child pornography creates an economic motive for production of child pornography, so does the possession. In fact, possession can be said to be the ultimate goal in the production and distribution; for without individuals willing to purchase and possess, there would be no motive to produce, sell, distribute or advertise."

The case has dragged on for nearly two years with continuances granted at the request of both sides.

ACLU Porn "Defense" Is Protested

About 15 placard-carrying demonstrators protested yesterday what they called the American Civil Liberties Union's "unconditional defense" of the pornography industry.

Led by Andrea Vangor of Kirkland, director of Together Against Pornography, the demonstrators marched in a circle on a sidewalk in front of the Smith Tower, where the Washington office of the ACLU is located.

The demonstrators mostly women, carried signs, some of which read "Porn Kills," "ACLU Defends Indecent Liberties" and "ACLU Is Hand Fed by Hugh Hefner."

Vangor said the ACLU should put distance between itself and the pornography industry.

Vangor's anti-pornography group and Eastside Citizens for Decency Through Law have mounted a campaign that has persuaded six major store chains to remove Playboy and similar publications from their magazine racks.

ACLU legislative director Gerry Sheehan said the group takes an "absolutist" position on published pornographic materials. The ACLU has no objections to the government making the production of child pornography illegal, he explained. "It's child abuse."

But once those materials exist, they should enjoy First Amendment protection Sheehan said.

Tough Road to the Bench

Before it's all over, Seattle attorney William Dwyer may wish he'd never been nominated for a federal judgeship; he's had nothing but a hard time ever since his name was sent to the president.

The first bad thing that happened to him was that his appointment ran afoul of the Reagan administration's predisposition to appoint to federal judgeships only those attorneys who can pass a litmus test of arch conservatism.

Because Dwyer carries a reputation for liberalism, his name was put on hold by the Justice Department until Washington Sen. Slade Gorton ransomed it with a vote the administration badly needed for the appointment of a conservative and marginally qualified Indiana attorney to a federal judgeship. In exchange for that vote—which Gorton says he intended to cast anyway—he got a pledge that Dwyer's nomination would be unfrozen. Whether it has or not, is not apparent yet.

That was not the end of Dwyer's problems, it turns out. At the end of last week, the Bellevue-based Citizens' Committee for the Right To Keep and Bear Arms announced it will wage an "aggressive campaign" to block Dwyer's nomination. The committee's executive director said the decision was made after contacting Dwyer to determine his views about gun control and Second Amendment issues.

A committee news release said Dwyer is a long-time member and past board member of the Washington state section of the American Civil Liberties Union, which the committee believes holds a "radical" anti-gun viewpoint. They will fight his nomination until he disassociates himself from the anti-gun views of the ACLU, the news release said.

In response, Dwyer said he once was a board member of the Washington ACLU but he served for less than one year and that was 25 years ago. He said someone called him on the telephone and asked him about his views on the Second Amendment but that he declined to discuss anything about the judicial nomination process; the same answer he has given to others.

Meanwhile, the president of the state ACLU's board of directors has said that the ACLU is not involved in gun-control lobbying and that he knows of no legal cases in which the state ACLU has argued in favor of gun control.

That's not the end of it yet. On the weekend, the state Republican convention in Everett, after it was taken over by an ultra-conservative faction, criticized the nomination of Dwyer in a resolution. It was not clear, however, whether the delegates were more interested in blocking Dwyer's nomination or in taking a swipe at the

state's two Republican senators, both of whom have lauded Dwyer's qualifications for the judgeship.

With all he has going against him, Dwyer may need some m[illegible]ckmailing by state senators on other prospective administration appointmen[illegible] he makes it to the federal bench.

Library To Keep "Show Me" Sex Book

(By Ed Penhale)

The controversial sex education book "Show Me" will remain on Seattle Public Library shelves, despite a prosecutor's warning that it may violate laws against child pornography, the Seattle Library Board decided yesterday.

The five-member board unanimously decided the book is intended for educational use and is not child pornography.

After the board's unanimous decision, King County Prosecutor Norm Maleng's office said it will announce Monday whether any criminal charges will be filed against library board or staff members for violating a new state law against child pornography.

EXPLICIT PICTURES

Maleng hasn't branded the book as illegal, but has said it is "within the purview" of the law against sexual exploitation of children.

"Show Me," on library shelves for a decade, contains pictures of children engaging in sexually explicit conduct, including masturbation, and fondling of breasts, genitals, pubic areas and buttocks. Teen-agers are shown having sexual intercourse and there are pictures of breast feeding and childbirth.

The book, written by Swiss child psychologist Helga Fleischhauer-Hardt, also contains a text that explains to parents how they should use the book to explain to their children everything from puberty to childbirth.

"They're going to regret this," anti-pornography leader Andrea Yangor said of the board's decision. Vangor and a Bellevue-based group called Eastside Citizens for Decency Through Law complained to the board about "Show Me," and then pointed it out to Maleng. Vangor claims the book is pornography and exploits children.

If Maleng decides to file charges, library board president John C. Cannon may reconsider his position. "That would be a whole new ballgame," he remarked.

The fact that Maleng never stated that the book is illegal helped Cannon vote to retain "Show Me," the board president said.

Cannon said reasonable people may disagree over whether the book is appropriate for the library, but added: "There is absolutely nothing to suggest to me that the book is illegal."

"We, the body that makes the policy decisions, cannot let the radical rhetoric of the right or the limitless liberal left cajole us into those kinds of decisions," Frank Greif told fellow board members.

Michael Kranda, spokesman for Maleng, said no decision to file charges has been made. Under the state law, possession of child pornography is a misdemeanor.

Although the law makes it a felony to distribute such materials for commercial purposes, that part of the law may not be applicable to a library, said Ron Clark, chief criminal deputy prosecutor.

The library board met Thursday in a closed-door executive session with Seattle City Attorney Doug Jewett and the board's special legal counsel on the "Show Me" matter, Bill Dwyer.

They voted to retain the book at a public meeting yesterday, where Dwyer said: "The courts would clearly hold that this book is serious in its purpose and that it has real, legitimate, substantial value as an educational resource. I don't believe there is a sufficient legal basis, under either the federal law or state statute, to justify removing the book from the collection of the library."

The American Civil Liberties Union of Washington already had taken a similar position.

Board member Meade Emory said the purpose of "Show Me" is not to serve as a sexual stimulus and therefore, it does not meet the test for materials outlawed by state and federal laws.

Vangar disagreed. "This issue has been fought in the Supreme Court, in the Congress and in the state Legislature," she said. "We have worked out a concept in this country of child pornography. It is that you may not have a minor perform sex acts for the camera for any reason whatsoever."

A photocopied version of the book is available at the education desk of the Seattle library system's main branch. It can't be removed from the library.

Mail to Library Runs 2 to 1 Against Sex Education Book

(By Ed Penhale)

The Seattle Public Library's mail was running 2 to 1 against the controversial sex education book "Show Me!" yesterday as the deadline passed for public comment on whether the book should be banned.

The American Civil Liberties Union of Washington and King County Prosecutor Norm Maleng added their own formal opinions yesterday, setting the legal battle lines for the emotionally charged issue. The book has been targeted by anti-pornography crusaders, who want it removed from the library.

Maleng, who has recommended removal of the sexually explicit book, said in a prepared statement that "Show Me!" should not be analyzed in terms of its impacts on the viewer, ". . . but from the enlightened viewpoint of its impact on the children used in its production."

The ACLU memorandum to the board described "Show Me!" as a "serious and thoughtful educational work" and recommended it remain in the library "until a court holds that possession of the book is unlawful. We also urge the board to vigorously defend any action, civil or criminal, which may be brought against it for retaining the book, and to carry that defense to the appellate courts if necessary.

The book, on Seattle library shelves for a decade, contains pictures of children under age 16 engaging in sexually explicit conduct, including masturbation and fondling of breasts, genitals, pubic areas and buttocks. There are pictures of people engaging in sexual intercourse, both oral and genital.

"But it cannot be said with certainty whether these people are younger than age 16," Maleng said in his memorandum.

Maleng said early last month that the book is not appropriate for library shelves, but made no determination on whether the book violates a state law on child pornography that went into effect last year. Under the law, which Maleng helped write, it is a felony to distribute child pornography and a misdemeanor to possess it.

The book was pointed out to Maleng's office by anti-pornography leader Andrea Vangor, who termed it "child pornography" that she believes violates the state law.

240 LETTERS

The Seattle Library Board canceled closed-door meeting to hear testimony for and against the book—after protests over the secret nature of the hearing—and invited the public to send written comments on the book.

As the deadline for the comments passed yesterday, the library had received about 240 letters. Most letter writers condemned the book as "child pornography," demanding its removal from library shelves. Others urged the board to resist any form of censorship or praised the book as a worthy sex education manual.

Seattle's head librarian, Ron Dubberly, was on vacation yesterday, but a library spokeswoman said the board would set a public meeting to decide whether to keep "Show Me!" in the library or banish it from the shelves. No date for the meeting has been set yet.

SUPREME COURT RULING

In his memorandum, Maleng recited legal decisions that led to the U.S. Supreme Court ruling in 1982 that gave states the right to outlaw virtually all child pornography and removed the First Amendment protections given to adult pornography.

Even though the children posed with their parents' consent, Maleng said the book should be removed from the library because it "is within the purview of the language of this state's law against the sexual exploitation of children."

"Show Me" Shows Us Something About Dwyer

(By Bill McColley)

Admidst all the hoopla about the Senate confirmation hearings for Judge Robert Bork, there was a little item from the Senate about a previous Eastside organization. It was about the confirmation hearing of Seattle lawyer William Dwyer to the federal bench. Senator Strom Thurmond is asking that the committee spend an

extra day to hear the concerns of the originally Bellevue-based organization, Together Against Pornography.

T.A.P. is concerned with Mr. Dwyer because several years ago—and at great expense to the taxpayer—he recommended that the library keep a sex education picture book. *Show Me* was published originally in Europe as a guide to help children understand human sexuality. The book is controversial because the publisher withdrew it to avoid persecution under current kiddy porn legislation.

I remember seeing a copy many years ago in a Canadian bookstore. The premise of the book is that sex education is best taught to nude children. Apart from the commentary at the end, the only text is of conversation these children have with each other and with a mother. They talk about each other and what they have seen in others. And they have had a rather broad experience in voyeurism. They watch two teenage girls hugging each other and of course these adolescent girls are both nude. In fact, everyone in the book is photographed nude and all those who engage in sexual acts are below the age of 16 at the publisher's own admission. That fact alone would make the book illegal by Washington state law.

They have also peeked at an older brother having sex with his girlfriend. Photos of the sex play and act with childish comments are shown. And of course, photos of the children fondling each other's sex organs are shown. I don't know where any child could get this kind of experience apart from a permissive nudist colony. Of course, this book doesn't suggest that homosexuality and premarital sex are wrong. The only thing children are told is to wait until they are older. By older, I suppose 14 or 15 is meant.

At the time, I didn't know what laws it violated, but at the very least it was in very poor taste and wholly inacceptable to use in my family. When I moved back to the United States, I was surprised to learn that *Show Me* was banned from bookstores. Although adult pornography is not censored, child pornography is more objectively defined and prohibited.

But William Dwyer advised the Seattle Public Library that *Show Me* was not objectionable and could be retained in its collection without violating any laws.

Now I am married to a librarian and I know how sensitive the issue of censorship is. But it does seem to me that with the increased number of child abuse cases in our courts, we ought to support the very objective standard that our legislation gives us. It is apparently considered child abuse to take pictures of nude children fondling each other. I happen to appreciate the concern for children shown by that law and I agree with T.A.P. that anyone who finds *Show Me* acceptable is not a fit candidate to adjudicate the law on the federal bench.

"And if anyone causes one of these little ones who believe in Me to sin, it would be better for him to be thrown into the sea with a large millstone tied around his neck."—Jesus.

Child Porn, Sex Abuse Investigated in County

(By Peyton Whitely)

Police are investigating three incidents of sexual exploitation of children in Seattle and King County, according to court documents.

They include one inquiry into the activities of a well-known Seattle citizen. Another involves a day-care home and a third concerns the use of a 9-year-old girl in a pornographic videotape.

In the firt of the cases, dozens of photographs of young girls posing in the nude were seized Aug. 29 at an address on Burke Avenue North after police executed a search warrant.

The warrant was issued after a woman told police she had met a man at the Fremont Street Fair who told her he had recently become interested in photography and wanted to photograph her two minor daughters.

The woman said she agreed to let the man photograph her daughters on Aug. 28 and they went to the man's apartment, where he showed her a book called "Youthful Beauty." The man then gave the girls "pretty bridesmaid-type dresses," according to the warrant, and tried to pose the girls in provocative positions. The man then showed the woman about 30 photos of a nude 6-year-old in sexually explicit positions.

When police went to the man's apartment, acting on information supplied by the woman, they seized photo equipment, a copy of the book "Show Me," which was the object of a controversy at the Seattle Public Library earlier this year, four books of nude photographs and numerous negatives and photograph prints.

The suspect in the case, who has not been charged, has been active in Seattle's community affairs for years.

In a second investigation, a 56-year-old Kirkland man was arrested Aug. 20 in connection with a 3-year pattern of sexual encounters with a young girl while she was attending a day-care home.

According to an affidavit filed with a search warrant, the incidents took place between July 6, 1979 and July 6, 1982 at a home along Northeast 80th Street in Kirkland's Rose Hill area.

The victim, now 11 and living in California, attended day care at the home then, said Dean S. Lum, deputy prosecuting attorney. The home was licensed under the name of a woman living at the home, Lum said, but the man under investigation "would often be around during the day."

Beginning when the victim was 5, the man molested her on several occasions, Lum said. The girl recently disclosed the incidents to her mother, who reported them to investigators.

The suspect has been released, on his personal recognizance. The state Department of Social and Health Service was unable to say whether the home is still licensed to provide day care.

In a third incident, King County police served a search warrant Friday at a Kirkland residence along Northeast 128th Street after a 9-year-old girl reported she was used in pornographic videotapes by her uncle.

The girl said she had spent the night with her 38-year-old uncle on Aug. 23. The girl said the man made videotapes of her in the bathtub and involved her in sexual activities. Police found 10 videocassette tapes, 23 books, two sets of sexual aids and marijuana paraphernalia. Police said they are continuing their investigation.

Prosecution Urged for Those Who Permit Sexual Abuse of Children

(By Lee Moriwaki)

Parents, day-care operators and even school authorities ought to be criminally prosecuted if they knowingly place children in situations that lead to sexual abuse, a key Washington state legislator says.

The call for tough action came yesterday from Sen. Phil Talmadge, chairman of the Senate Judiciary Committee, after a Harborview sexual-assault-center official recounted how a King County mother saw her daughter being sexually assaulted by her husband, but did nothing about it.

The molestations took place from the time the child was 6 until she was 18. The father only now is being prosecuted because the daughter is testifying against him, said Lucy Berliner, coordinator for child research and community advocacy at Harborview Medical Center.

The mother ought to be prosecuted for endangerment at the least, said Berliner. But Washington's criminal statutes presently do not allow for that.

A National Conference of State Legislatures' panel on child sexual abuse was presented a litany of horror stories yesterday about the meager resources available for prosecuting offenders and treating the victims.

Berliner said federal dollars to support basic research into why people molest children are virtually nonexistent. Treatment of offenders is in a rudimentary stage at best, added Timothy Smith, co-director of Northwest Treatment Associates in Seattle. And the education of children about sex abuse is left primarily up to the family, both said.

"Well, guess who molests children," Berliner said.

Talmadge said he favored a proposal first suggested by King County senior Deputy Prosecutor Rebecca Roe that parents or people given the responsibility of parents be liable for criminal offenses, such as endangerment, if they knowingly place or let children remain in a physically or sexually abusive environment.

Talmadge said state laws that say spouses can't be forced to testify against each other could be amended so there is an exception in child-abuse cases. Spouses already can be made to testify in cases involving the commitment of a mate for mental illness, Talmadge noted.

There were some 30,000 cases of child abuse and neglect reported in Washington state last year, of which almost one-fourth involved incidents of sexual abuse, Talmadge said.

Smith, the Northwest Treatment Associates co-director, said pedophiles move from locale to locale and across state lines, and may molest 300 to 400 children in a lifetime.

No foolproof treatment method has been developed yet, he said, noting that treatment around the world ranges from castration to prayer. The most advanced programs may include counseling, electro-shock or some form of sex therapy, he said.

As far as the victims, the full trauma may not materialize for years. "We can't say your child is fine. We tell parents that you have to worry about this the rest of your child's life," Berliner said.

ACCUSED CHILD MOLESTER USED "SHOW ME" BOOK, TEEN TELLS COURT

TERRACE, B.C. (AP)—A man charged with 29 counts of child sex abuse used the book, "Show Me," showing children in a wide variety of sexual activities, to persuade his victims they should go along with him, a 14-year-old girl testified in court.

The girl said she thought the man got her to look at the book "to show us it was right, what we were doing."

She was testifying Wednesday at the Provincial Court trial of Robert Willoughby, 35. He is charged with 24 counts of gross indecency, four counts of illegal sexual intercourse, and one count of sexual assault involving six children over a 10-year period.

The girl told Judge Paul Lawrence that Willoughby first showed her the book when she was 9 or 10 years old.

The book recently made news in Seattle when a group protested its presence in the Seattle Public Library. After several meetings, library officials decided to keep the book.

The girl said Willoughby showed her the book several times, and encouraged her to show it to other children with whom he was involved.

WE DON'T WANT BILL DWYER AS OUR FEDERAL JUDGE
You Have the Right to Know Why.

Who are we to stand up against two U.S. Senators, the liberal establishment, and the major media to protest the proposed nomination of Seattle attorney William Dwyer to a District Court judgeship?

We are people all over this state – grassroots people from all walks of life, political leanings, and religious persuasions. Despite our differences, we agree on this: that the federal judiciary must be composed only of men and women who respect the laws which our society deems essential to protect children from exploitation by pornographers.

Regardless of his influential friends and other qualifications, we do not hesitate to condemn Bill Dwyer's nomination because this is **the same Bill Dwyer** who:

- was, and is, **a leading light of the American Civil Liberties Union,** whose official policy would abolish laws against the distribution and sale of child pornography.
- was **paid by Seattle taxpayers** in 1985 to explain child pornography laws to the public library board, and **falsely stated** that a book's claim to "educational" value would exempt it from child pornography law – despite a clear and unanimous 1982 U.S. Supreme Court ruling to the contrary.
- advised that library to retain **Show Me!** despite its **many photographs of actual children under 16 performing sex acts** ranging from masturbation to oral, anal, and vaginal penetration – a book no longer published or sold legally because of Constitutional state and federal laws against child pornography.
- **is obviously unfit** to serve the people of this state as a federal judge. **Please** stand with us to oppose his nomination.

Please copy and circulate this signature sheet and return to WTAP, 10636 Main St., No. 44, Bellevue, WA 98004, before October 15. Sheets will be copied and forwarded to Washington D.C.

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Washington Together Against Pornography – On Our Own Home Ground

Senator LEAHY. Would the Senator from Iowa just yield to me for 1 minute here?

Senator GRASSLEY. Yes, sir.

Senator LEAHY. Mr. Taylor would not have, I would assume not have had a chance to see this. But, in the prior hearing—this follows along the lines of what you were just asking. Let me read from the transcript. Senator Leahy speaking.

One of the witnesses who was unable to be here, Bruce Taylor, of Citizens for Decency Through Law, asked that we pose a question to you concerning the child pornography laws. The question is simply this: Would you as a Federal judge act to enforce the Federal child pornography laws or do you have a problem with the constitutionality of those laws?

Mr. Dwyer's answer—this begins on page 47 and ends on page 48. Mr. Dwyer's answer:

I believe they are entirely constitutional and very valuable, and I said so at the time of this public library matter in 1985. If a case of that nature ever came before me as a judge, of course I would apply fully and faithfully those laws as well as all others. I must say I feel especially strongly on that subject.

Which goes back to his prior testimony in discussing what he had done in helping to close a teenage nightclub called The Monastery.

The Senator from Iowa?

Senator GRASSLEY. Well, I would like to make an observation. And I think what the Chairman just said is a good place to start. Whether or not Mr. Dwyer testifies to something and whether or not people believe that testimony.

I think in the Bork nomination we had Judge Bork say, what his position was, but I think there was a general lack of belief of that statement. That maybe what he said in 1962 or some other writing 15, 25 years ago is, in fact, his position today. That maybe he hadn't changed his view to some extent.

And, again, I guess it is a case of you can't have it both ways. I think there are a lot of people in this room would feel that it is probably wrong that Mr. Fein would bring up some writings several years back to haunt a nominee today, and yet that is exactly what happened for three solid weeks during our hearing before this very committee on the Bork nomination.

I guess I would like to start there, Mr. Fein, and ask you how you would compare the allegations against the Goldmarks with the distortions that we have heard about another public official, Robert Bork?

Mr. FEIN. Well, I think that the similarity is very pronounced. For instance, the allegations against the Goldmarks, they had tried to smear them by suggesting that simply because certain views that seemed to coincide between the Goldmarks and the Communist Party would suggest that Mr. Goldmark was a Communist, or that because Sally Goldmark in the past had been a member of the Communist Party she couldn't ever have voluntarily left the Party and disavowed those views.

With regard to Judge Bork, it said, well, he really couldn't have changed his mind and really knew what he was doing when he said that, in respect, he had, for example, disavowed opposition to the 1964 Civil Rights Act, well, then that was insincere; and their efforts to try to paint that because Judge Bork believed that certain

methods of reasoning were wrong, then he couldn't possibly have actually believed that the result might have been desirable but just that he couldn't have taken constitutional shortcuts to reach those results.

And the, I suppose the foremost example, one that Senator Hatch brought forth yesterday, I believe, advertisements by People for the American Way accusing Judge Bork as being a racist, accusing him of turning back the clock a 100 years if he was going to sit on the U.S. Supreme Court, and I think the similarity is very great between the similarly unfounded allegations that were made against the Goldmarks.

But I think as well it has got to be recognized that in this book Mr. Dwyer, in my judgment, commits the same censurable conduct that he so ardently denounces with regard to the Goldmarks. Because he is accusing those so-called members of the radical right. These include people like Senator Thurmond, Ronald Reagan, former Admirals and Generals. He says these people have little faith in democracy or time for its processes, and he goes on to say that they believe that the enemy is so hateful that they basically will sacrifice obedience to the law in order to achieve their ends.

Now, those—basically he charges the so-called radical right as saying the ends justify the means. This is coming from someone who clearly is a very astute lawyer and recognizes the very grave danger in that kind of attitude, and when it comes to attacking everybody as being a Communist if they happen to be a member of the Democratic Party.

Senator GRASSLEY. On the other hand, if Mr. Dwyer would say today that Senator Strom Thurmond is not a right wing radical, I would accept that as the truth. I guess the only thing is I would ask of anybody who judges Judge Bork based on something he said in 1964, if Judge Bork says he changed his view, then I guess I would say that we ought to accept that.

Mr. FEIN. Yes, I agree.

Senator GRASSLEY. I mean, maybe I am naive in this business, but I tend to believe things until I find out—I believe people until I find out they are liars.

Mr. FEIN. I agree with that, Mr. Senator. "The Goldmark Case" was published in 1984, so it is not 20 years old or something like that.

Senator GRASSLEY. Okay.

Mr. FEIN. And it was published at a time where there was adequate time for deliberation and reflection by Mr. Dwyer. It is not as though, and I could understand, he had written it right in the aftermath of a very heated, impassioned trial and where he had strong feelings against the people he thought he was opposing defending the Goldmarks. This comes 20 years or more after the trial, and it is not written in a time where he could be expected, perhaps, to have his emotions involved.

Senator GRASSLEY. Dr. Vangor, or maybe anybody else on the panel, didn't the *Ferber* ruling have an impact upon the distribution of "Show Me?"

Ms. VANGOR. It stopped, as far as legal distribution was concerned. The Seattle Public Library, and I assume because the letter is a general one addressed to booksellers, all outlets which had offi-

cially obtained that book from the publisher, ordered it, were given a letter, which I provided to you in my exhibits, stating that because of *New York* v. *Ferber* in 1982 this book will no longer be published.

Senator GRASSLEY. Wasn't the book also affected by the congressional passage of the 1984 Child Protection Act?

Ms. VANGOR. Well, not only that, but as I have commented already, the publisher of the book, Mr. Thomas McCormack, came to the Subcommittee on Juvenile Justice of the Senate Judiciary Committee specifically to ask, to plead for a law which would leave him some leeway to continue publish or sell or distribute Show Me in States which, unlike New York State, had not adopted a proper child pornography law.

And, obviously, the Congress did not yield to his request because, as Mr. Taylor has said, there is no such loophole in Federal law.

Senator GRASSLEY. As a result of the court ruling in *Ferber* and the passage of the Child Protection Act, didn't the sale of the book cease in adult book stores and didn't it cease to be advertised in adult magazines?

Ms. VANGOR. That is true. And at the same time, I will add, in the same sort of magazines such as Hustler where parents or guardians could submit a picture of a minor in a pornographic, lewd pose, those sorts of things also ceased.

Senator GRASSLEY. Now, I want to—I suppose there are lots of advertisement like this, but I want to make note of the fact that in March 1977, in Chic, "Show Me" was advertised. You could order it from Leisure Time Products.

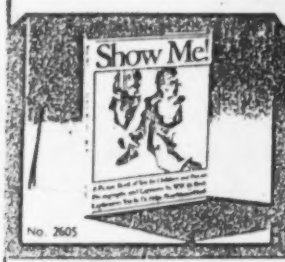
Ms. VANGOR. "Paint your mailbox blue," is what it says.

Let me comment, Senator——

Senator GRASSLEY. I also have one here from Hustler Book Service, I suppose Hustler magazine.

[The aforementioned follows:]

HUSTLER book SERVICE



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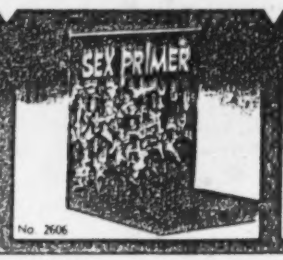

No. 2606

No. 2621

SHOW ME!
This is the last word in photographically explicit sex manuals for children. Test by Dr. Helga Fleischhauer-Hardt answers every question a child could possibly pose, and the photography by Will McBride is as artistic as it is informative. Highly recommended for its realistic approach to what is often an awkward subject.
No. 2605 $12.95

SEX PRIMER
Here is a collection of some of the funniest sex-plicit cartoons in years. Flowing copiously from Rod Q. M'Gurk's pen on the veiled satires of *Beetle Bailey, Superman, B.C.* and more. One story shows and tells how a motorcycling chick finds true happiness with a cousin of Smokey the Bear. Sure to tickle your bone, funny or otherwise.
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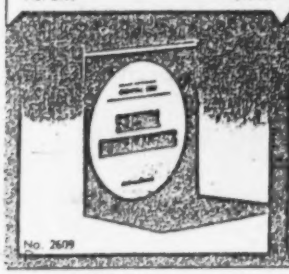
39 Sex Fantasies for Women
A fascinating and authentic sampling of erotic female desires. Perhaps for the first time, the various imaginings of the female mind have been recognized and seriously understood. Honest and sincere in its method and approach, it sharpens the reader's sexual insight. Both men and women will find it rewarding reading.
No. 2621 $7.95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No. 2610

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This is the first book ever to be devoted exclusively to the genitals as a pleasure source. This fact-filled, oversize volume reveals a series of special views of the penis actually deep inside the vagina, and it describes the proper positions and motions for the maximum stimulation of genital areas. The documented records of genital size will amaze you.
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LITTLE "DIRTY" COMICS
Those wonderful "scandalous" turn-ons are back in this 3-volume collection of famous sex comics. Experience once again the secret, sexy adventures of *Popeye, Dick Tracy, Little Orphan Annie,* and dozens of others. More than 800 illustrations in full color and black & white. 640 pages in 3 volumes.
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Impressions of Lust by Jo Ann Audrey
I Am Erotica takes you out of the ordinary into a wondrous world of sexual revelations. It gives you love—only more than just love. It brings forth all of the breathtaking beauty, the unexcelled ecstasy of love and lust. *I Am Erotica* is unlike any other. It stands by itself... unrivaled... unequaled! Illustrated.
No. 2612 $7.95

Paint your Mailbox blue.

I am Erotica

Impressions of Lust by by Ann Audrey

I Am Erotica takes you out of the ordinary into a wondrous world of sexual revelations. It gives you love — gets more than just love. It brings forth all of the breathtaking beauty, the unescelled ecstasy of love and lust. I Am Erotica is unlike any other. It stands by itself. Unrivaled . . . unequaled! Illustrated.

No. 2612 . . . $7.95

Show Me!

This is the last word in photographically explicit sex manuals for children. This explanatory text by Dr. Helga Flavia Bhagwat Hardi answers every question a child could possibly pose, and the photographs by Will Mc Bride is as artistic as it is informative. This book is highly recommended for its realistic, unabashed approach to what is often an awkward subject. No liberated family should be without a copy.

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Never before has such erotic beauty been captured by the camera's roving eye. Artist-Photographer Ron Raffaelli expresses the love of a man and a woman in the fascinating form of pictorial prose. In thirteen of the most breathtaking sexual fantasies imaginable, the reader is elevated to the highest levels of ecstasy. Mind blowing and mouth watering.

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Date _____ I AM 21 YEARS OF AGE OR OLDER
Please send _____ Please allow up to 4 weeks for delivery.

☐ #2612 @ $ 7.95 ☐ #2605 @ $12.95 Subtotal $_____
☐ #2608 @ $25.00 ☐ #2621 @ $ 7.95 (Ohio Res. add 6% Sales Tax _____
☐ #2607 @ $ 9.95 ☐ #2615 @ $30.00 Postage & Handling $1.50
PLEASE PRINT TOTAL _____

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Enclosed is my ☐ Check ☐ Money Order (cash not accepted)
or charge to my ☐ BankAmericard ☐ Master Charge

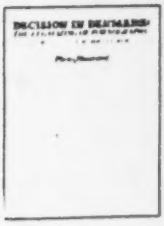
Credit Card No. _____ Interbank No. (MC only) _____

Signature _____ Expiration Date _____

Classic Fairy Tales

Sir Rod O. M'Gork does it again, and this time in the funny fantasy world that Disney never told you about. Goldilocks skips her meeting with the bears and comes upon three bald bunsers instead. Cinderella has herself a ball as Prince Charming's Royal Ball, while her two ugly stepsisters musically indulge themselves. And Jack and the Beanstalk rises through the clouds to encounter the biggest piece of sin in creation. A rat in the pottery.

No. 2607 . . . $9.95



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The controversial subject of pornography is explored in this hardbound book with great sincerity and clarity. Societies evolve and must make certain readjustments. This photo-illustrated book tells you what happened after Denmark legalized pornography. A $30 value.

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Ms. VANGOR. That is correct. Very few parents who seek educational materials of a legitimate, serious nature are looking for that material in a Hustler or Chic magazine, which is where the publisher chose to have it advertised.

Senator GRASSLEY. Why have experienced investigators associated with the various Federal agencies like the FBI and the Postal Service been critical of the book "Show Me?"

Ms. VANGOR. Well, because they find it all over the place. We have testimony, for example, in the Meese Commission from Daniel Mihalko, who is now involved with the Postal Service, U.S. Postal Service, and was at the time, to the effect that this book turns up constantly. People like Ken Wooden, people like John Rabun, people like Jim Chandler from the Adam Walsh—anybody you ask who knows anything will tell you that time and time again where child molesters are using any material at all to assist them in the seduction of children and to overcome their resistance, to teach them to perform sex acts, to be compliant, "Show Me" is found on site.

Senator GRASSLEY. What is the position of the American Library Association on this particular book? And, if you know why they hold that view, tell me.

Ms. VANGOR. Well, I can't explain why they hold their view, but I can tell you what they hold. Their view coincides with the view of the American Civil Liberties Union, which is—there is two views here that concern me. First of all, under the "Library Bill of Rights" adopted in the past few years, they hold that they have the power and right to provide any material to anyone, regardless of age, meaning children as well, without the parents' knowledge and consent; and that, obviously, applies to everything in the library, which might be Playboy magazine, might be R rated videos, might be what have you , and also "Show Me."

But they believe with the ACLU, that child pornography materials once produced enjoy the protection of the Constitution. They will grant that producing it is illegal, but once you have got it and the kid is out the door, you can sell it, display it, put it on a highway billboard. This is like saying it is illegal to print funny money, but if you get away with it, you can go spend it.

Their position is that child pornography material is protected under the Constitution, and you have a document from the Washington Library Association stating that. Their position is that libraries, in particular, should have the right to possess child pornography. I have fought successfully an effort in my State by the State Library Association to pass such legislation.

I don't know what could be more plain than that.

Senator GRASSLEY. All right. Does the book have educational merit?

Ms. VANGOR. According to Toby Tyler, who has written this to you lately—I imagine he included it in his letter—the book is extremely educational. It is the best way for a child molester to educate a child into having sex.

Again, serious educational value is the point of contention. Looking at the profile of "Show Me," its history, the places where it was marketed, being marketed in adult book stores, being marketed in pornographic magazines read by people who we assume are not

looking for serious legitimate educational works to educate their children with—this is not the profile of a legitimate serious work of education.

And let me say also, even if we make the best possible case for "Show Me," even if we are persuaded by its advocate that this was done with the highest intentions and from the highest motives, let's forget the advertising in porno magazines and just take their word for it, they had the best purpose in mind in producing this book—this book which they say was produced for the best motives and purposes, that same book is the pedophile's bible. That same book is the single item FBI expert Ken Lanning says, single item most commonly found in the possession of pedophiles in this country. That book is reported in evidence rooms over and over again. That book is used to molest children over and over and over.

That is a very powerful argument in itself for a child pornography law as we have it in this country. That even if you try to make a sexually explicit collection of photographs for the best possible motives, it still constitutes a serious threat to the welfare and safety of children in this country.

Senator GRASSLEY. Why did a lawyer of Mr. Dwyer's reputation not refer to the *State* v. *Marshall* as precedent when he was advising a public body about an area of law that was interpreted in this case by the highest court in the State of Washington?

Ms. VANGOR. Well, to be fair to Mr. Dwyer, I understand, and I am not a lawyer, that in the *Marshall* case, the first conviction occurred a month after he told the library it was impossible for this to happen. What concerns me more is why he didn't tell you, on the committee, that this case was in the record, and instead said, to the best of my knowledge and belief, he said on September 11th, there is no case in the United States where "Show Me" has been looked at under a child pornography law.

I find that amazing.

Senator GRASSLEY. That is the last question I have of this panel, but I am still bothered, Mr. Chairman, and anybody else in this room that cares. You know, there is an old saying, "The chickens come home to roost," and now we have got publications of writings of Mr. Dwyer being used, that are being used against him as if that is the last word he has on a subject. We had the same thing happen to Judge Bork, and I think we ought to be concerned about the precedent that was set by the Bork case of not somehow giving fair consideration to the fact that people can change their minds sometimes.

I don't know whether Mr. Dwyer has changed his mind from what Mr. Fein said, but, if he told me he did, you know, I guess I would believe him. And I guess I believe Judge Bork did the same thing.

Senator LEAHY. If you could just bear with me for a moment, Mr. Fein. I will try to make sure that everybody got a chance to be heard.

Do you wish to respond to Senator Grassley?

Mr. FEIN. I just want to underscore, in fairness to Mr. Dwyer, that all of my observations are based on his 1984 publication, and he may well have said, either before this committee or otherwise,

that he doesn't subscribe to some of those assertions. And I want to underscore it's just this book that I've examined.

Senator LEAHY. Dr. Vangor, a few days ago, this committee received a letter from Cheryl McCall. She's a woman who prepared an award winning documentary on the tragic lives of runaway children in Seattle. The letter which, without objection, will be included in the record in full, recounts a number of instances where she talked about Mr. Dwyer helping disadvantaged and victimized children, matters that he did not bring before us and probably would not have.

[Letter follows:]

Cheryl McCall
69 Decatur Avenue
Guilford, Connecticut 06437

October 18, 1987

The Honorable Patrick Leahy
The United States Senate
Washington, D.C. 20510

Re: Appointment of William Dwyer
(Western District of Washington)

Dear Senator Leahy:

I am writing to you in your capacity as Chairman of the Judicial Task Force of the Senate Judiciary Committee, which must confirm William Dwyer's nomination to be a United States District Court Judge for the Western District of Washington. The intense scrutiny focused on this nominee's personal beliefs and character may reflect a growing trend in the judicial confirmation process but it seems to me entirely unwarranted in this case. I have become aware of some opposition to Mr. Dwyer's nomination but quite frankly I don't understand its source. To the best of my knowledge, his critics have never been acquainted with him, either personally or professionally. As one who knows and admires the man, I would like my voice to be heard.

I have been a journalist for seventeen years. The last decade of my career was spent as an editor and staff writer at Time, Inc. for PEOPLE and LIFE magazines. I am also a screenwriter and producer of the documentary film Streetwise, for which I received an Academy Award nomination two years ago. Streetwise is a film about the tragic, sordid lives of a group of young runaway children living on the streets of Seattle which developed from an article I wrote for LIFE. In my role as a journalist, I have written a number of award-winning articles on the abuse and exploitation of children and, indeed, testified before another Senate subcommittee on this subject in 1985. Currently, I am studying law under a fellowship for journalists at Yale Law School.

I offer this detail about myself only as background for my initial introduction to Mr. Dwyer and the respect and friendship which grew from our professional dealings. He has served as a pro bono legal advisor on matters arising from Streetwise and as Time, Inc.'s attorney on a matter related to a LIFE article I had written. While I admit that I'm often frustrated by his infuriating ability to see and to weigh all sides in a dispute, I concede that this quality would recommend Mr. Dwyer as a judge. In fact, I have known dozens of lawyers and judges in my years as a journalist and can't honestly cite one with more probity, intelligence or integrity than the nominee before you.

But even his critics have the good sense not to dispute Mr. Dwyer's professional credentials and qualifications for a federal judgeship. However, I understand that there are some who suggest that he is heedless to the

plight of exploited children and victims of crime. I submit that his detractors, while no doubt well-intentioned, are terribly misinformed. Because it is so difficult and awkward to defend one's self against spurious allegations, I would like to be an advocate for Bill Dwyer by telling you what I know of the man.

Over the years, again and again I've seen Bill Dwyer assess troublesome situations and determine how he best might help someone. Then quietly put a plan into action. There has never been a hint of personal gain involved or an ulterior motive that I could detect. When he met one of the young runaways featured in Streetwise, a girl who had already survived three suicide attempts and had become a child prostitute by the age of fifteen, he befriended her. Through his efforts, she was given a job at his law firm and received some training in basic office duties. She earned enough money to enter school and learn a trade as a beautician. Her law firm references also enabled her to get two other jobs about which I know. On a number of occasions, she was invited to the Dwyer home and made welcome by his wife, Vasiliki, and their three children. When the world and her own parents had discarded her, Bill Dwyer gave this child a chance and a more precious gift --the self-esteem so sadly absent in her life.

When another of the young runaways in Streetwise was killed in a brutal stabbing, she was destined for a pauper's grave unless someone intervened. Bill Dwyer generously and anonymously contributed to a fund so that Lulu could have a decent burial. No one asked him nor expected him to do this. He offered.

When a black youngster from his neighborhood couldn't afford to attend college, Bill Dwyer learned about it, quietly stepped forward and subsidized his education. The young man is now a third-year law student in a good California university, studying on a private Dwyer scholarship. I doubt that most of Bill's closest friends even know this.

When a fellow attorney's son disappeared into the street world of Seattle, Bill Dwyer personally became involved in the search to bring him home. I know this because I roamed the streets at night with Bill trying to find the boy. David Crosby's prior testimony before the subcommittee told you the extent of Bill Dwyer's involvement and the threats he incurred because of it.

He has assisted a number of others that I know about -- some writers, actors, artists and at least two other law students--try to achieve their goals in life by befriending them in times of need with his private fellowships or by creating opportunities for them. His instincts are selfless, humane and generous to a fault.

But tragedy visits the best and the least of us. Bill Dwyer is not immune. In the recent past, a young Seattle couple and their two small boys were senselessly and horribly murdered in their own home on Christmas Eve. Bill Dwyer had known the man as a child, attended his wedding, toasted the birth of his children, and helped mourn the death of his mother. The

victims were close family friends taken so suddenly and painfully from the Dwyers' lives. To suggest that Bill Dwyer is somehow insensitive to victims of crime is callous and irresponsible. Who among us could emerge from that wrenching ordeal without an acute empathy for those who suffer the effects of crime? His opponents do Bill Dwyer a grave disservice in persisting with this myth.

I bring these facts to your attention because I know Bill's modesty and self-deprecating nature would not permit him to come to his own defense. As a journalist, I usually find it helpful to look beyond the public image to the telling details and anecdotes that give one a measure of the person. I imagine that you must do the same in your consideration of each judicial nominee who comes before your committee. I hope this letter provides some of the insight you require for Bill Dwyer's confirmation. He is a fine lawyer and a rare, remarkable human being. I believe he will make an excellent judge.

Sincerely yours,

Cheryl McCall

Cheryl McCall

Senator LEAHY. I'd like to ask if you are aware of these. Were you aware that he helped a young girl, 15 years old—she had become a child prostitute—but he helped her by giving her a job in his law firm and enabled her to save enough money to enter school, train for a career of her own, arrange recommendations for her to help her get a job, were you aware of that?

Ms. VANGOR. No.

Senator LEAHY. Were you aware that he helped pay for a decent burial for a young runaway who was killed in a very brutal stabbing so that runaway wouldn't be buried in a pauper's grave?

Ms. VANGOR. I was not aware.

Senator LEAHY. Were you aware that he helped pay for the college education of a black youngster from his neighborhood who otherwise wouldn't have been able to attend college?

Ms. VANGOR. No, I'm not aware of that.

Senator LEAHY. Most people aren't. Most people aren't.

I have received more letters and statements on this nominee than I think any nominee I've ever seen, of people he's helped, things he's done for others, that his closest friends, others weren't even aware of, and certainly that he wasn't out to talk about, for just one act of kindness after another.

We could all talk about how we want to do good and help people over and over again. We've had statements from people who have talked to Mr. Dwyer helping.

I'd appreciate this panel——

Ms. VANGOR. May I respond to your comment, Senator, since you've asked me those questions, and remind you that what I am aware of, and what I came to tell this committee, is that Mr. Dwyer has espoused a position which would put a price on the head of every child in Western Washington.

Senator LEAHY. You have stated your opinion and I hope you feel that you have been given every opportunity to do so.

Ms. VANGOR. Thank you, Senator.

Senator LEAHY. Do you feel you have?

Ms. VANGOR. I'm satisfied. Thank you.

[The following letter was subsequently supplied for the record:]

1835 K Street, N.W. • Suite 700 • Washington, D.C. 20006
202/634-9821

AUGUST 28, 1987

Ms. Andrea K. Vangor, Ph.D.
Executive Director
Washington Together Against Pornography
1011 Boren Avenue, #148
Seattle, WA 98104

Dear Dr. Vangor:

Per your letter of August 19th in reference to the book Show Me!, the following information may be of some assistance. Prior to my coming to the National Center as its Deputy Director, I was the Program Manager for the Louisville-Jefferson County KY Exploited & Missing Child Unit. This police/-social work Team was the first in the nation created to provide detection, investigation, and protective services on behalf of youth as well as apprehension and prosecutory services against adults criminally exploiting children through prostitution, pornography, or child-sex-rings in the Louisville SMSA.

From July, 1980, through February, 1984, the police/social work Team of the E.M.C.U. investigated about 1,400 cases of children suspected of being victims of sexual exploitation. 54% (756) of the children were found to be victims and an additional 31% (431) of the children were considered probable victims although lacking sufficient proof for court proceedings.

During this time period, the E.M.C.U. prosecuted hundreds of adults for various crimes involving the sexual exploitation of children. Over 40 major cases involved the successful prosecution of adults involved with over 12 children each. In one particular case, investigators thought there were up to 320 child victims. At the time of arrest of and/or service of search warrants, ALL of these adult predators were found with various forms of adult pornography and in most cases child nudes and/or child pornography. Over 4 years, the E.M.C.U. Team learned to expect to always find adult pornography as such was used by the adult offenders for their own sexual arousal, for self validation of their own sexual deviation(s), for extortion of child victims or other adults, and for the deliberate and planned lowering of inhibitions of child victims.

The book Show Me! was one item which was frequently found in the searches of child molesters' property, generally was used in the seduction of the children, and was seen as "highly erotic" by those pedophiles. Any behavior on the part of criminals that appears consistently and universally must be recognized as having high predictive and preventative value for law enforcement and legislation.

Clearly, one should expect to find Show Me! in the arsenal of tools used by preferential child molesters to erode "family, school, and church values" about age-appropriate human sexuality in preying on children. Law enforcement nationally now carefully and deliberately searches for Show Me! type publications in child molestation investigations.

Please let me know if I can provide any further clarification or be of any further assistance.

Cordially,

John B. Rabun, Jr., ACSW
Deputy Director, Technical Assistance

c.c.: Ken Lanning
Rob Showers

Senator LEAHY. Thank you. I thank the panel for testifying.

Dr. Vangor, you said your organization wanted to use "Show Me" as an educational campaign, and we've heard a lot this afternoon about "Show Me."

Now I would like to go to the next panel because I think since the subject of this hearing is Mr. Dwyer's nomination, we should hear about him.

Mr. TAYLOR. Senator.

Senator LEAHY. Yes.

Mr. TAYLOR. If I may just for a minute.

You asked Ms. Vangor about whether or not she should have had an citizen action, or hired us or asked us to come in and do it. Let me say that it would have been a tough job to do that. The statutes in Washington only give standing to the prosecutors and not the private citizens so we would have had to argue for a common law standing. We would have had a lot of procedural hurdles to get at before we could even get to the point of whether "Show Me" should be in the library. And there may not be anything left to enjoin the library from doing. They may be acting perfectly responsible. They may not be giving it out to the public. They may restrict it to researchers, and that would be fine.

However, that still doesn't change the issue.

Senator LEAHY. It may even turn out the Mr. Dwyer's legal opinion was right on all fours.

In any event, Mr. Taylor, we'll have the King County prosecutor's office discuss just that issue.

Thank you all.

Mr. FEIN. Mr. Chairman, could I ask my statement be printed in the record.

Senator LEAHY. Your statement will be printed in the record as it had not arrived prior to your testimony, until just a few minutes prior.

Senator THURMOND. I want to thank the panel for appearing and testifying.

Senator LEAHY. The next panel I call William Gates, the former president of the Washington State Bar Association in Seattle; Patrick Fitzsimons, the chief of police, the Seattle Police Department, Seattle, Washington; Robert Lasnik, chief of staff, Office of the King County Prosecuting Attorney, Seattle, Washington; Michael Zeitner, the past president of Parents in Arms, Seattle, Washington; and Judith Krug, director, Office of Intellectual Freedom, American Library Association, Chicago, Illinois.

Would you please all stand and raise your right hand?

Do you solemnly swear the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. GATES. I do.

Mr. FITZSIMONS. I do.

Mr. LASNIK. I do.

Mr. ZEITNER. I do.

Ms. KRUG. I do.

Senator LEAHY. Let the record indicate they all said I do.

There will be a little bit less time proportionately to give this panel to the amount of time the other panel had. We'll have 35

minutes for this panel. I think my math works out right. We had 25 minutes for three, 35 minutes for five. You get a little bit less time, but what we might do, and again I'll follow the same rule we did with the other panel, is to divide up the time any way you want. We will start with you, Mr. Gates.

TESTIMONY OF PANEL INCLUDING WILLIAM H. GATES, FORMER PRESIDENT, WASHINGTON STATE BAR ASSOCIATION, SEATTLE, WA; PATRICK FITZSIMONS, CHIEF OF POLICE, SEATTLE POLICE DEPARTMENT, SEATTLE, WA; ROBERT LASNIK, CHIEF OF STAFF, OFFICE OF KING COUNTY PROSECUTING ATTORNEY, SEATTLE, WA; MICHAEL ZEITNER, PAST PRESIDENT, PARENTS IN ARMS, SEATTLE, WA; AND JUDITH F. KRUG, DIRECTOR, OFFICE OF INTELLECTUAL FREEDOM, AMERICAN LIBRARY ASSOCIATION, CHICAGO, IL

Mr. GATES. Mr. Chairman, my name is William Gates. I have filed testimony with the committee. I would like, if possible, to file a signed copy of that testimony.

Senator LEAHY. And it will be made a part of the full record and feel free to refer to it, add to it, or condense it any way you want. But your whole statement will be made part of the record.

Mr. GATES. Thank you.

Mr. Chairman, Senator Thurmond, Senator Grassley and other interested parties, my name is William H. Gates. I was born in Bremerton, WA, which is just across Puget Sound from Seattle. I graduated from law school at the University of Washington, and I have practiced law in Seattle continuously since 1950.

I have been the President of the Seattle-King County Bar Association, and the immediate Past President of the Washington State Bar Association. I've been the President of the National Conference of Bar Presidents. I'm currently the elected delegate of the lawyers of the State of Washington to the American Bar Association House of Delegates. I am Chairman of the American Bar Association Commission entitled Public Understanding about Law which, prior to my association with it, was instrumental in Mr. Dwyer having been given a gavel award by the American Bar Association on account of the contribution of his book, "The Goldmark Case," to public understanding about law.

I have been a member of the visiting committees of both the University of Washington Law School and the University of Puget Sound Law School.

I have been Chairman of the Seattle Public Schools Levy Campaign Committee. I've been an officer and member of the Board of the Seattle Chamber of Commerce, the King County United Way, the Municipal League of Seattle, the Seattle Repertory Theater, Chief Seattle Council of the Boy Scouts of America.

I think I can fairly represent, Mr. Chairman, that I know the legal community and the business community and the civic interests of the people of the Puget Sound Area very well. I am a lifelong Republican.

Mr. Dwyer has practiced law in Seattle for over 30 years. I know him, I know his reputation and his standing in our community very well.

I think the thing I'm most anxious that this court—that this committee——

Senator LEAHY. Mr. Gates, if it's any consolation, having come first to the Senate from a number of years of being an active trial attorney, for my first several months here, I was referring to the Chairman as His Honor, and a couple of times I testified, I started off "If it please the Court." It is a habit, long ingrained and difficult to change.

Mr. GATES. I expect I'll do it again.

I know Mr. Dwyer. I know his reputation and his standing in our community.

The thing that I am so anxious for this committee to appreciate is the enormous enthusiasm, the enormous enthusiasm which the lawyers and the people of our area feel about this nomination. It comes from all quarters, Republicans, Democrats and Independents alike. It comes from the law enforcement leaders, including the prosecuting attorney of our county, whose representative is a member of this panel, and from the chief of police of our city who is also represented on this panel.

He is endorsed by the Washington State Bar Association, by the Seattle-King County Bar Association, and by the Federal Bar Association for the Western District of Washington.

In a letter written on his behalf by the Dean and 28 professors of the University of Washington Law School, they said, "Mr. Dwyer is the very best qualified person in Washington to be appointed to a Federal trial court."

Leading newspapers and television stations in our area have supported this nomination. The Seattle Post-Intelligencer says "a superb nominee."

The Weekly, "His reputation for fairness and courage is legendary."

The Bellevue Journal American, "An outstanding lawyer who will make an outstanding judge."

The Seattle Times, This nomination has "elevated the process of judicial appointment to a new high level."

KING Television, "William Dwyer, one of Seattle's brightest legal minds, has the support of our legal, business and social community."

KIRO Television, "A man of enormous integrity and skill."

The Everett Herald, "His arrival on the Federal bench will be a real credit to the President."

The Bremerton Sun, "Superbly qualified."

Mr. Dwyer has been rated exceptionally well qualified by the American Bar Association and, as you know, that accolade obtains only in the case of about 5 percent of the nominees to come before this committee for the Federal bench, and almost never in the case of someone who is not a sitting judge.

Bill is a past President of the Seattle-King County Bar Association. He has been a member of the Board of Governors of the Washington State Bar Association, and he is a Fellow of the American College of Trial Lawyers.

He has taught extensively, including stints at the University of Washington Law School, the National Institute of Trial Advocacy,

and as a skills demonstrator in legal matters for the Smithsonian Institution here in Washington.

In his career as one of the leading trial lawyers in the Northwest, Bill has handled many large, complex cases, and he has handled many cases for individuals on a pro bono basis. He is a fine lawyer. He is a judicious person. He knows how the courts work. He will be both a fine judge and he will contribute administratively to the solution of the enormous problems we have with congestion and delay.

I just sum it up this way, that if Federal judges were chosen in our area by polling the lawyers, he would be virtually a unanimous choice. And if Federal judges were elected in our district, Mr. Chairman, he would be elected by a landslide. I strongly encourage your favorable consideration of this appointment.

[The statement of Mr. Gates follows:]

STATEMENT OF WILLIAM H. GATES
IN SUPPORT OF NOMINATION OF
WILLIAM L. DWYER
TO THE UNITED STATES DISTRICT COURT

Committee on the Judiciary
United States Senate
October 22, 1987

My name is William H. Gates. I was born in Bremerton, Washington, just across Puget Sound and a short ferry ride from Seattle. I graduated from law school at the University of Washington and have practiced law in Seattle continuously since 1950.

I have been President of the Seattle-King County Bar Association, President of the Washington State Bar Association and President of the National Conference of Bar Presidents. I am the elected delegate of the lawyers of the State of Washington to the American Bar Association House of Delegates. I am Chairman of the American Bar Association Commission on Public Understanding About Law and have been a member of the visiting committees at both the University of Washington and University of Puget Sound law schools.

I have been Chairman of the Seattle Public Schools levy campaign and have been an officer and/or board member of each of the following: Seattle Chamber of Commerce, King County United Way, Municipal League of Seattle, Seattle Repertory Theatre, Chief Seattle Council Boy Scouts of America.

I know the legal community, the business community and the civic interest people of the Puget Sound area very well.

I am a lifelong Republican.

William L. Dwyer has lived in the Seattle area for 58 years (except for absences for school, army service and travel). He has practiced law in Seattle for over 30 years. I know Mr. Dwyer, his reputation and his standing in our community very well.

The people of our area, not just the lawyers, take a great interest in maintaining the quality of our judiciary. Our State court judges are excellent and the federal bench is first rate. Judge Voorhees, whose elevation to senior status created the position Mr. Dwyer has been nominated to fill, is one of the finest jurists who ever served in the Western District of Washington.

It is important that the Committee understand the enthusiasm which has greeted this nomination throughout Western Washington. Support comes from people in all walks of life; the nomination is welcomed and endorsed by a remarkably wide range of community leaders:

-- Republicans, Democrats, and Independents.

-- Law enforcement leaders including the King County Prosecuting Attorney and the Seattle Chief of Police. The Prosecuting Attorney, a strong and widely respected law enforcement official who happens to be a Republican, has written that the Senators from Washington State "Could not have selected a better person to recommend to the President."

-- The Washington State Bar Association, Seattle-King County Bar Association and the Federal Bar Association for the Western District of Washington.

-- The Dean and 28 professors at the University of Washington School of Law. They have written that in their opinion Mr. Dwyer "is the very best qualified person in Washington to be appointed to a federal trial court."

-- Leading newspapers and television stations in the Seattle area. They have described Mr. Dwyer in words such as these:

> "a superb nominee" (Seattle Post-Intelligencer)
>
> "his reputation for fairness and courage is legendary" (The Weekly)
>
> "an outstanding lawyer who will make an outstanding judge" (Bellevue Journal American)
>
> This nomination has "elevated the process of judicial appointment to a new, high level" (Seattle Times)
>
> "William Dwyer, one of Seattle's brightest legal minds, has the support of our legal, business and social community" (KING-TV)
>
> "A man of enormous integrity and skill" (Louis Guzzo, KIRO-TV)
>
> "his arrival [on the federal bench] would be a real credit to the President" (Everett Herald)
>
> "superbly qualified" (Bremerton Sun)

Many individuals have written to support the nomination. I will give only a brief sampling:

Alfred J. Schweppe, who at 92 is the dean of practicing lawyers in Seattle, a leading citizen, and a conservative Republican: "The choice of Bill Dwyer . . . could not, in any way, be improved upon. I have known [him] well throughout his more than 30 years of distinguished practice as one of the state's finest trial lawyers, probably the best trial lawyer now practicing in this region . . . The strength of character which has made William Dwyer an outstanding trial lawyer will make him an equally fine federal judge."

Jack P. Scholfield, Chief Judge of the Washington State Court of Appeals: "Bill's integrity is absolutely beyond doubt . . . [He] is devoted to the law and, on the bench, will exhibit the industry, even-tempered disposition, courtesy, common sense and fairness which mark those truly qualified for judicial service."

Joel Pritchard, former Republican Congressman: "When you put Bill Dwyer on the bench, this administration proves its commitment to quality in appointments."

Harvey Lipton, Vice President and General Counsel of the Hearst Corporation and a former opponent of Mr. Dwyer's in major litigation: ["He] is eminently qualified to serve as a United States District Court judge by reason of his temperament, discernment, and scholarship . . . [he] will become an outstanding member of the Federal judiciary."

Paul Steere, former president of the Washington State Bar Association: "Dwyer is incorruptible, hard working, bright and without doubt one of the finest trial lawyers in this area.

His loyalty to our institutions and to our system of laws is beyond challenge."

James R. Ellis, a celebrated civic leader in Seattle, also a Republican: "His confirmation will mean the appointment to the federal trial bench of one of the most distinguished lawyers in the history of the bar of this state."

John F. Hansler, a highly regarded conservative, evangelical Christian lawyer for Tacoma: "I believe William Dwyer would make an enormous contribution toward excellence in the administration of justice in the federal courts. . . . He has integrity, compassion, and energy. . . . Conservatives and liberals alike trust his fairness and his judgment, and both seek his counsel."

Michael and Linda Zeitner, leaders of Parents in Arms, a child protection organization: "We are deeply in Bill Dwyer's debt because of his selfless dedication to helping parents such as ourselves and mahy others regain their children . . . His integrity as a man, as well as an attorney and future judge, is beyond reproach."

Mr. Dwyer has been rated "exceptionally well qualified" by the American Bar Association for appointment to the U.S. District Court. That rating is given only to about five percent of all nominees and is very seldom awarded to someone who is not already a judge.

He is a past president of the Seattle-King County Bar Association; past member of the Board of Governors of the

Washington State Bar Association; and a fellow of the American College of Trial Lawyers.

Bill Dwyer has taught extensively including:

-- The University of Washington School of Law

-- The National Institute for Trial Advocacy

-- Service as a trial lawyer skills demonstrator for the Smithsonian Institution here in the nation's capital

Bill Dwyer is well known for his public service work and has received awards recognizing his work from:

-- The American Bar Association

-- Governor of the State of Washington

-- Seattle-King County Bar Association

-- Washington Law Review

In his career as one of the leading trial lawyers in the Northwest Bill has handled many large, complex cases -- also many pro bono cases. He knows how the courts work and he can contribute greatly to alleviating today's problem of court congestion and delay.

Mr. Dwyer's appointment is looked forward to eagerly by the federal judges in Washington State. A serious backlog has developed and the court in Seattle needs help immediately.

I respectfully urge the committee to recommend confirmation without further delay.

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WILLIAM H. GATES

Senator LEAHY. Thank you very much.

Chief Fitzsimons, I might indicate incidentally, back in a prior life as a prosecutor and one of the officers of the National District Attorneys Association, I had occasion quite a few years ago to spend some time with one of your predecessors, who was then chief of police. I spent 2 or 3 days in your city, and I enjoyed it very much.

I also might add for the record—and I meant to have done this, Mr. Gates, when you testified—one of my closest friends is a member of the Washington State Bar, Sanford Kinzer, a former administrative assistant of mine. He is one person who could easily call and lobby me or anything else if he wanted. He never has, except once. Last night he called, said he knew that Mr. Dwyer was going to be back up again and also strongly urged that he be confirmed, and stated many of the same things that you have stated.

Chief Fitzsimons?

Mr. FITZSIMONS. Mr. Chairman, I am the chief of police in Seattle and I have been since about February of 1979. There are about 1,500 officers and civilian employees of that unit, and before coming to Seattle I was an assistant chief in New York City where I had a variety of jobs, all kinds, administrative, patrol, line, operational, and did all that kind of work in New York as well.

I was educated at the Fordham University and have a B.S. degree from that school and a Juris Doctor degree from their law school. I was also a Fellow at the Harvard Law School Center for Criminal Justice.

I have been elected by my peers in the West to represent them on the FBI's Criminal Information Center Advisory Board, and I have been appointed by our Governor to serve on Washington's Organized Crime Advisory Board. I have also been appointed by the International Association of Chiefs of Police as the chairman of their National UCR Committee.

In the past I have served the Governors of both New York and Washington State, both Democratic and Republican Governors, in a variety of appointed jobs on various committees dealing with police standards. And I might just add that at one point I was also selected as an academic visitor by the University of South Carolina in their Graduate School, when they were putting together their graduate program in criminal justice and forming their basic academy, which I am sure Senator Thurmond knows a good deal about.

I belong to the Major City Chiefs Association and the Police Executive Research Forum, and other professional organizations in law and criminal justice and public administration. I had one national award by the American Society for Public Administration for outstanding national contributions to the advancement of criminal justice.

Now, I have been personally acquainted with William Dwyer since about the time he came to Seattle. I have known him to be a leader at the bar, a civic leader, as well as a highly respected trial lawyer. Our department and I, as the chief of police, have worked with Mr. Dwyer on several matters over the past years. When I needed legal counsel in connection with lawsuits for damages that were brought by former police officers who were terminated for cause because of conduct that had resulted in their being convicted

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under the criminal laws, I chose Mr. Dwyer. He advised me correctly and helped achieve a satisfactory solution to a very difficult problem.

Mr. Dwyer was also instrumental in achieving the closure of a notorious youth center, so-called youth center, that was posing as a church operation, while, in fact, drawing young people into criminal conduct, prostitution and narcotics activities. He provided a unique and committed legal resource in gathering the evidence and the cooperation of concerned parents in pursuing a successful civil abatement proceeding.

When a family of four, friends of Mr. Dwyer——

Senator LEAHY. Is that The Monastery you are referring to?

Mr. FITZSIMONS. Sir?

Senator LEAHY. Is that The Monastery?

Mr. FITZSIMONS. Yes. It was posing as a church, Senator.

Senator LEAHY. Thank you.

Mr. FITZSIMONS. When a family of four, who were friends of Mr. Dwyer, were murdered in Seattle on Christmas Eve, 1985, he went far beyond the normal call of duty in helping the police, the prosecutors and the surviving family and friends of the victim.

He is a financial contributor to charitable organizations benefiting crime victims, street children, and the families of police officers.

Beyond the matters I have described, I have heard Mr. Dwyer as a public speaker. I have talked with him myself many times. I know his character and reputation in the community. I have known Mr. Dwyer to be a strong ally of effective law enforcement, and based on my experience I believe that the criminal laws will be applied vigorously and correctly if he is on the bench. He is not afraid to make a hard decision. He will not be deterred from handing down severe sentences when the occasion calls for them.

As the chief of police in a major city, I have been alert to the legal protection of children. The last thing I would do is to support a judicial nominee who might in any way be soft in those areas. In this case there is absolutely no doubt that the nominee would vigorously and faithfully apply those laws.

In conclusion, I know William Dwyer to be a man of high ideals and compassion, who is exceptionally well qualified to be a Federal judge. And as a career police officer, I am here to strongly recommend your favorable consideration.

Senator LEAHY. Thank you very much, Chief Fitzsimons. I appreciate the testimony.

Mr. Lasnik?

Mr. LASNIK. Thank you, Mr Chairman, Senator Thurmond. I am Robert Lasnik, chief of staff in the King County Prosecutor's Office in Seattle. We are the largest prosecutor's office in the Pacific Northwest, with 117 attorneys. I have a bachelor's degree from Brandeis University in psychology and sociology, and master's degrees from Northwestern University in education and journalism. I found my way to the great Northwest and went to the University of Washington Law School, where I received my Juris Doctor in 1978.

I joined the King County Prosecuting Attorney's Office at that time. I was in the criminal division for several years and became

the legislative and policy assistant to our Republican, elected prosecutor, Norm Maleng, and am now his chief of staff.

We have developed in our office a national reputation for our expertise and innovation in the area of prosecution of cases of child sexual abuse and exploitation. Norm Maleng made this the highest priority upon his election in 1978. In 1979, he established a special unit which was focused exclusively on prosecuting cases of child sexual and physical abuse and sexual assaults against adults. In the 8 years of its existence that unit has grown from three prosecuting attorneys to 11, and has broadened its scope to include all aspects of family violence.

Our special assault unit has been cited by both the National District Attorneys Association and the Attorney General's Task Force on Family Violence as a national model for prosecution of these sensitive cases. On the legislative front, our office drafted a number of bills designed to make the criminal justice system more responsive to the needs of child victims and witnesses.

These included a special hearsay exception for young children, extensions of the statute of limitations for crimes against small children, broader victim compensation rights, and a new law on child pornography which focuses attention on the exploitation of the children used in its production, not the effect on the reader.

All are now law in Washington State and some were the prototype for similar legislative reforms around the country. I, myself, had the privilege of being one of the three prosecutors who pioneered that special assault unit in 1979, and I have personally prosecuted scores of cases of child sexual assault.

I was also the office draftsman and lobbyist for the crucial legislative changes that I referred to above. I am proud to say that the child abuse hearsay exception which we adopted in Washington State in 1982 as the first State in the Nation has now been adopted by more than 20 other States throughout the country.

Mr. Maleng, as past president of the Washington Association of Prosecuting Attorneys and a vice president and Executive Board member of the National District Attorneys Association, has been instrumental in spreading the news about what can be done to enhance prosecution efforts to combat child abuse and exploitation.

It is in this context that I indicate to you that William Dwyer has been a constant supporter of our office's efforts to eradicate from our community those who prey upon our children. In 1985, Seattle was plagued by an establishment which was the very embodiment of the term "den of iniquity." An all-night teen disco, called The Monastery, had become a haven for drug dealers and child molesters who preyed upon a group of underaged runaways provided with liquor, drugs such as cocaine, speed, MDA, and these young people were encouraged to have illicit sex with adult patrons.

The police had great difficulty penetrating the operation with undercover officers. The owner generally insulated himself from the most blatant illegalities. It was at this juncture that Bill Dwyer approached our office to offer assistance for a concerted effort to close down The Monastery through civil abatement. Representing a group of parents whose children were within the clutches of these predators, Mr. Dwyer provided law enforcement with crucial infor-

mation utilized to build a series of successful felony drug prosecutions against patrons and employees of The Monastery and a successful civil abatement action which permanently shut it down.

The Monastery, indeed, was a moral and legal nuisance. The owner of The Monastery mounted a vigorous publicity campaign to portray his position as a minority, gay churchman, who was the victim of police harassment and discrimination and whose civil rights and liberties had been trampled. Having Bill Dwyer stand shoulder to shoulder with us in court helped focus attention on the fact that the rights and liberties being trampled were those of the children, whose vulnerability made them easy prey for the predators who prowled this disco.

The citizens of our community also have been well served by Bill Dwyer's legal abilities in other areas. All sports fans and taxpayers in our area remember well the superb job Mr. Dwyer did representing King County in a lawsuit against a contractor who walked off the job during construction of our domed stadium. Since so many of our lawyers were potential witnesses, we hired outside counsel, and Bill Dwyer was the first choice. He won a judgment of $12.3 million for the county.

He also successfully prosecuted our government suit, the State and the county, against the American League after the Seattle Pilots were allowed to steal away to Milwaukee after just one season as an expansion team, and that suit led to our being awarded the present Mariners franchise.

In summary, Mr. Dwyer has proved himself to be both a superb lawyer and a dedicated and committed advocate for the rights of children. He will be a tough-minded Federal judge who will fairly and vigorously apply the criminal laws.

Thank you, Mr. Chairman.

Senator LEAHY. As a prosecutor, you wouldn't be at all upset seeing him on the Federal bench?

Mr. LASNIK. As a prosecutor, he is exactly the kind of judge that we would love to appear before: tough-minded, one who puts us through our paces but who is eminently fair and tough-minded.

Senator LEAHY. That is actually an answer that could be given by defense attorneys, too.

Mr. LASNIK. Defense attorneys, Mr. Chairman, are always looking for the judge who is going to be the easiest for them. I am convinced about that. But prosecutors are always the ones looking for the fairest.

Senator LEAHY. You are going to all those prosecutor parts of my soul that still remain there, Mr. Lasnik.

[Prepared statement follows:]

TESTIMONY OF ROBERT LASNIK, CHIEF OF STAFF

KING COUNTY PROSECUTING ATTORNEY'S OFFICE

BEFORE THE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

WASHINGTON, D.C.

October 22, 1987

I am Robert Lasnik, Chief of Staff in the King County Prosecuting Attorney's Office in Seattle, Washington. Our office is the largest prosecutor's office in the Northwest with 117 attorneys. We have developed a national reputation for our expertise and innovation in the area of prosecution of cases of child sexual abuse and exploitation. Prosecuting Attorney Norm Maleng made this issue the highest priority upon his election in 1978. In 1979 he established a special unit to focus exclusively on prosecuting these cases and sexual assaults against adults. In its eight years in existence it has grown from three prosecutors to eleven prosecutors, and expanded its scope to include all aspects of family violence. Our Special Assault Unit has been cited by both the National District Attorneys Association and the Attorney General's Task Force on Family Violence as a national model for prosecution of these sensitive cases.

On the legislative front our office drafted a number of bills designed to make the criminal justice system more responsive to the needs of child victims and witnesses. These included a special hearsay exception for small children, an extension of the statute of limitations for child sex crimes, broader victim compensation rights and a new law on child

pornography which focused attention on the exploitation of children used in its production. All are now law in Washington State and some were the prototype for similar legislative reforms around the country. I myself had the privilege of being one of the three prosecutors who pioneered the Special Assault Unit in 1979 and I was the office draftsman and lobbyist for these crucial legislative changes.

As Past-President of the Washington Association of Prosecuting Attorneys and a Vice-President and Executive Board Member of the National District Attorneys Association, Prosecutor Maleng has been instrumental in spreading the news about what can be done to enhance prosecution efforts to combat child abuse and exploitation.

It is in this context that I indicate to you that William L. Dwyer has been a constant supporter of our office's efforts to eradicate from our community those who prey upon our children.

In 1985 Seattle was plagued by an establishment which was the embodiment of the term "den of iniquity". An all-night teen disco called The Monastery had become a haven for drug dealers and child molestors who preyed upon a group of underage runaways who were provided with liquor and drugs such as cocaine, speed and MDA and encouraged to have illicit sex with adult patrons. The police had great difficulty penetrating the

operation with undercover officers. The owner generally insulated himself from the most blatant illegalities. It was at this juncture that Bill Dwyer approached our office to offer assistance for a concerted effort to close down The Monastery through civil abatement. Mr. Dwyer, representing a group of parents whose children were within the clutches of these predators, provided law enforcement with crucial information utilized to build a series of successful felony drug prosecutions against patrons and employees of The Monastery and a successful civil abatement action which permanently shut down The Monastery as a moral and legal nuisance. The owner of The Monastery mounted a vigorous publicity campaign to portray his position as a minority, gay, churchman, who was the victim of police narassment and discrimination and whose civil rights and liberties were being trampled. Having Bill Dwyer stand shoulder to shoulder with us in court helped focus attention on the fact that the rights and liberties being trampled were those of the children whose vulnerability made them easy prey for the predators who prowled this disco.

The citizens of our community also have been well served by Bill Dwyer's legal abilities in other areas. All sports fans and taxpayers remember well the superb job Mr. Dwyer did representing King County in a lawsuit against a contractor who walked off the job during construction of our domed stadium.

Since so many of our lawyers were potential witnesses, we hired outside counsel and Bill Dwyer was the first choice. He won a judgment of $12.3 million for the county. He also successfully prosecuted our suit against the American League after the Seattle Pilots were allowed to steal away to Milwaukee after just one season as an expansion team. That suit led to our being awarded the present Mariners franchise.

In summary Mr. Dwyer has proved himself to be both a superb lawyer and a dedicated and committed advocate for the rights of children. He will be a tough-minded federal judge who will fairly and vigorously apply the criminal laws.

Senator LEAHY. Mr. Zeitner?

Mr. ZEITNER. Thank you, Mr. Chairman, Senator Thurmond, members of the committee. For the record, my name is Michael Zeitner, and I am a resident of Puyallup, Washington. I am also a medical device quality engineer at Physio Control Corporation, in Redmond, Washington, and I am the former president of a group called Parents In Arms, which is a child protection group.

I also hold ordination credentials with the Assemblies of God Church.

In a recent letter to Senator Thurmond, I urged the favorable consideration of William L. Dwyer as a Federal district court judge for Western Washington State, and I am pleased now to appear before this committee as a witness to Bill Dwyer's personal integrity in the light of the opposition by some who question whether his personal beliefs are consistent with conservative principles.

As a conservative, I am glad to do so, and strongly feel that if any of the antagonists actually knew Bill personally, they would reconsider their dispute over his appointment.

When I lost my twin sons to the streets of Seattle in early 1985, I also found that I had lost many of my rights as a parent as well. My first thought when I read their "good-bye" letter to me was to notify the authorities to get them back, but that did not work. There seemed to be no law against running away.

The social service people said: Sorry, they have their rights now. The school said: Sorry. Unless you can convince them to come home soon, we will have to drop them from their classes. The church said: Sorry. See if you can get them to come in for some counseling. And, believe me, it is a cold and lonely feeling when you love your kids and there is not a thing you can do to help them.

Into this terribly wide gap stepped two men who I believe are the reason my two sons are alive and well today: David Crosby, who has already testified before this committee and who was the founder of the group Parents In Arms; and Bill Dwyer, who unselfishly lent his time, his expertise, his caring, and above all his concern for not only David's or my kids, but for all of those families who were affected by what was known as The Monastery.

Bill has walked the dark streets of Seattle in search of runaway street kids. He knows what the inside of The Monastery was like. Any contention that Bill Dwyer supports pornography is ridiculous, and in reality we have a man who is not afraid to go up against the very root of pornography, the creators and the users of the stuff, the pedophiles, the pimps, the pushers, the child prostitution rings which developed and existed in The Monastery because no one cared. No one wanted to get involved. No one wanted to get their hands dirty. No one wanted to be singled out for death threats as both David and Bill were at that time.

Mr. Dwyer did not stop with the first success that we, as a group, achieved in 1985 with the closure of The Monastery, but he went on to help our group draft and obtain passage of a new Seattle city ordinance regulating teenage dance halls. He and his firm have defended us in a multi-million dollar lawsuit which was brought against us by the former operator of The Monastery. He has done all of this free of charge.

As a conservative, I share Ms. Vangor's strong aversion to pornography of any kind, but I cannot join her in her habit of accusing anyone who disagrees with her in the smallest detail of being soft on pornography. Unfortunately, she has made that accusation falsely against a number of responsible and well-respected people besides Mr. Dwyer. Among them have been a superior court judge, a county prosecutor, a U.S. attorney, and the management of a Christian drug rehabilitation facility.

False charges of this kind brought by Ms. Vangor against Mr. Dwyer and others do not help the anti-pornography movement; they only serve to discredit it. As far as we parents are concerned, William Dwyer has already won a victory for honor, decency and respect for the law. I urge your speedy consideration and favorable confirmation of William L. Dwyer as a Federal district court judge for Western Washington State.

Senator LEAHY. Thank you very much, Mr. Zeitner. Your statement is very similar to one we heard from another parent, that you are aware of, at the last hearing. I want you to know again, as I told him, that in 13 years here I could number on one hand statements of such power or that moved me as much as a parent.

[Letter follows:]

Honorable Strom Thurmond
Senate Office Building
Washington, D.C.

September 15, 1987

Dear Senator Thurmond:

This letter is in regard to the appointment of Seattle attorney William Dwyer to the office of a Federal Judgeship. My wife Linda and I have known Bill for the last three years, and would like to heartily recommend him for that high office.

We have also known Ms. Andrea Van Gor (head of WTAP) for the last two years, and know quite a bit about the issue before the Senate Judiciary committee. We would like to go on record as saying Ms. Van Gor is way off base in her stand against Bill Dwyer's appointment.

Like attorney Dave Crosby, we too, lost our sons to the intrigue of the streets of Seattle back in early 1985. The vilest, darkest, most degrading place you could ever lose a child to was open for business at that time. It was called the Monastery, and we're sure Dave Crosby has given ample testimony to its effect on our young people.

We are deeply in Bill Dwyer's debt because of his selfless dedication to helping parents such as ourselves and many others regain their children - physically, emotionally, and spiritually - from the clutches of that Satanic place.

After David removed his family to Alaska, I took over the leadership of the group Dave founded known as Parents In Arms. When this non-profit corporation was sued by the former operator of the Monastery, Bill again proved he was in it for the long haul, and represented both myself and the corporation, donating his services pro bono.

It must be understood that the environment within the Monastery far exceeded anything that Ms. Van Gor could dream of for sheer pornographic content. In that place, the kids actually lived the experience! While Ms. Van Gor's battle with the Seattle Library has taken on the aspects of a crusade, we feel she has lost sight of the true issues and has wrongfully accused Bill Dwyer in the process of her zeal.

Andrea claims to be a born-again Christian - well, so are we. I was ordained as an Assembly of God minister in 1976, and know full well the perils of the impact that pornography has on our children. To fault Bill Dwyer on a legal opinion (which has nothing to do with his stated personal opinion) is to falsely accuse him of something which does not make up the man.

Andrea, herself, when serving as a member of the board of directors on the Washington Parents Coalition (chaired by my wife), condemned a member group for the SAME THING! This group, CONQUEST CENTER - a Christian Drug rehabilitation facility - had committed the unpardonable sin by using a picture from Hustler magazine to illustrate drug use in the United States, (the picture was of four top rock stars that had died of drug overdose) and Andrea interpreted that as "promoting pornography" and wanted Conquest Center kicked out of the coalition. As it was, she was fortunate they chose not to sue her for defamation of character, since she voiced her views over a local Christian radio station, resulting in many listeners who contributed to Conquest Center withdrawing their contributions. In a later WPC board meeting, the members of the coalition found Andrea to be wrong in her thinking, and apologized to Rev. Gerald Sanders, head of Conquest Center. Andrea subsequently resigned from the WPC board citing that her issues were not the same as ours.

I apologize for the length of this letter, Senator Thurmond, but I thought it important that you have all the facts in this matter before your committee. The Bible says: "In the mouth of two or three witnesses let the thing be established" and you needed to hear all sides of the issue.

I trust that with this information, and the testimony of so many who can attest to Bill Dwyer's personal integrity, you will waste no further time in making the right decision, and confirming President Reagan's appointment of William Dwyer to the Federal Court bench. We believe his integrity as a man, as well as an attorney and future judge, is beyond reproach.

Yours very truly,

Michael J. Zeitner
Past President
Parents In Arms

Linda Zeitner
Past Chairwoman
Wash. Parents Coalition

cc: David Crosby Esq.
William Dwyer Esq.

Senator LEAHY. Ms. Krug?

Ms. KRUG. Thank you, Senator Leahy, Senator Thurmond. Good afternoon.

My name is Judith Krug. I am the Director of the Office for Intellectual Freedom of the American Library Association.

The American Library Association, founded in 1876, is the oldest and largest national library association in the world. Its concerns span all types of libraries: State, public, school and academic; special libraries serving persons in Government, commerce and industry, the arts, the armed services, hospitals, prisons, and other institutions. We have a membership of over 45,000 libraries, librarians, library trustees, and other concerned and interested persons from every State in the Union and from many countries of the world.

As such, the American Library Association is the chief spokesman for the people of the United States in their search for the highest quality of library and information services.

The Association maintains a close working relationship with more than 70 other library associations in the United States, Canada, and other countries, and it works closely with many other organizations concerned with education, research, cultural development, recreation, and public service. The American Library Association is governed by its council, which is comprised of 172 of our members.

The Office for Intellectual Freedom was established by the ALA Council in 1967. It is the administrative arm of the Intellectual Freedom Committee, which was established by the council in 1940.

The committee's statement of responsibility reads in part, and I quote:

> To recommend such steps as may be necessary to safeguard the rights of library users, libraries, and librarians, in accordance with the first amendment to the United States Constitution and the Library Bill of Rights as adopted by the ALA Council.

And we do have a copy of the Library Bill of Rights attached to the statement that was submitted to you.

Libraries in the United States are under constant pressure to remove or restrict materials that some segment of the community finds offensive or threatening to their point of view.

Challenges to materials come from all points on the political spectrum, and the challengers always believe they are "protecting" everyone else from sin or error. The range of challenges is vast—from "The Merchant of Venice," charged with being "anti-semitic", to "Romeo and Juliet," charged with promoting teenage suicide, to Shel Silverstein's "A Light in the Attic" and "Where the Sidewalk Ends," among other complaints to those two books were that they "encourage disobedience." The challenges include "The Grapes of Wrath," "Slaughterhouse Five," "Huckleberry Finn," "Catcher in the Rye," "Little Big Man," "Go Ask Alice," and "The Martian Chronicles," to name very few of a very long list.

Sex education books of all sorts and anything to do with the occult have also drawn extremely heavy challenges over the last few years.

I am here today, however, to speak directly about one sex education book, "Show Me." This work, which was first published in 1974 by a Lutheran Church-sponsored group in Germany, was pub-

lished subsequently in the United States in 1975. Since that time it has been subject to constant challenges as "obscene", but in four separate court cases, three in the United States and one in Canada, the work has consistently been found to be not obscene.

The U.S. Court of Appeals for the Second Circuit has stated, moreover, that the book would not come within the scope of a child pornography statute. There have been no other reported cases of which I am aware, involving the legality of this work.

On the basis of these rulings, libraries across the country have felt safe in acquiring this book because they have concluded or have been appropriately counseled by an attorney that acquisition or retention of "Show Me" would not place them in violation of any criminal statute.

This conclusion has been reached by large and small libraries throughout the country. The libraries holding "Show Me," as you have mentioned, Senator Leahy, include among others, New York, Boston, Chicago, Salt Lake City, Minneapolis, Dallas, San Francisco, and Philadelphia. But also, many smaller public libraries also hold this piece of material—places such as LaCrosse and Kenosha, WI; Lima, OH; Jackson, MS; Lincoln, NE; South Bend, IN; Tallahassee, FL, and the St. John Seminary in Brighton, MA.

Despite the fact that it is entirely legal for libraries to acquire and retain "Show Me," and despite the fact that it is the role of libraries in our society to make available and accessible the widest possible diversity of ideas and information, "Show Me" has been the object of numerous challenges across the country by so-called "anti-pornography" groups. In all but one of the challenges reported to the ALA, the library boards voted to retain the book in their collections, some with restricted access, some with open access.

The library jurisdictions that voted to retain "Show Me," after considering demands for its removal, include the Monroe County Library System in Rochester, NY; the Great Bend, Kansas library; the Stanislaus County Library in Turlock, CA; the Seattle Public Library; and the Alameda County Public Library in Hayward, CA.

As consistently as it has been challenged, just as constantly has "Show Me" been supported by teachers, parents and psychologists who believe it to be a valuable education book and who attest that the book's photographic nature has been an asset in therapeutic and educational activities.

The disagreements about the effectiveness of the work, about its author's perspective on sex education, or even about its possible offensiveness, are not factors, however, in the ALA's defense of the right of libraries to make this book available and accessible.

The inclusion of materials in a library's collection does not imply approval or endorsement by the library's board of the ideas or information contained in those materials. Libraries, among all of our public and cultural institutions, are especially responsible for sustaining the diversity and openness that are vital to a pluralistic society.

To this end, they necessarily keep books that are disapproved of by some, by many, and even by a majority. In doing so, we serve the most profound values of a free and open Constitutional Republic.

Thank you.

Senator LEAHY. Thank you very much, Ms. Krug.

[Statement of Ms. Krug follows:]

STATEMENT IN SUPPORT OF THE NOMINATION
OF WILLIAM L. DWYER TO THE UNITED STATES DISTRICT COURT

Committee on the Judiciary
United States Senate, October 22, 1987

My name is Judith F. Krug. I am the Director of the Office for Intellectual Freedom of the American Library Association. The American Library Association, founded in 1876, is the oldest and largest national library association in the world. Its concerns span all types of libraries: state, public, school and academic libraries; special libraries serving persons in government, commerce and industry, the arts, the armed services, hospitals, prisons, and other institutions. With a membership of over 45,000 libraries, librarians, library trustees, and other interested persons from every state and many countries of the world, the Association is the chief spokesman for the people of the United States in their search for the highest quality of library and information services. The Association maintains a close working relationship with more than 70 other library associations in the United States, Canada, and other countries, and it works closely with many other organizations concerned with education, research, cultural development, recreation, and public service. ALA is governed by its Council, comprised of 172 members.

The Office for Intellectual Freedom was established in 1967. It is the administrative arm of the Intellectual Freedom

Committee of the ALA, which was established by Council in 1940. The Committee's statement of responsibility reads, in part, "To recommend such steps as may be necessary to safeguard the rights of library users, libraries, and librarians, in accordance with the First Amendment to the U.S. Constitution and the LIBRARY BILL OF RIGHTS as adopted by the ALA Council.

Libraries in the U.S. are under constant pressure to remove or restrict materials that some segment of the community finds offensive or threatening to their point-of-view. Challenges to materials come from all points on the political spectrum, and the challengers always believe they are "protecting" everyone else from error or sin. The range of challenges is vast--from THE MERCHANT OF VENICE ("anti-Semitic") and ROMEO AND JULIET ("promotes teen-age suicide") to Shel Silverstein's A LIGHT IN THE ATTIC and WHERE THE SIDEWALK ENDS ("encourages disobedience" - among other complaints). The challenges include THE GRAPES OF WRATH, SLAUGHTERHOUSE FIVE, CATCHER IN THE RYE, LITTLE BIG MAN and THE MARTIAN CHRONICLES. Sex education books of all sorts and anything to do with the occult have also drawn heavy challenges over the last several years.

I am here today to speak directly about one sex education book, SHOW ME!. This work, which was first published in 1974 in Germany by a Lutheran-Church-sponsored firm, was published in the United States in 1975. Since that time, it has been subject to constant challenges as "obscene," but in four separate courts--three in the United States and one in Canada (synopses

attached)--the work has consistently been found not obscene. The U.S. Court of Appeals for the Second Circuit has stated, moreover, that the book would not come within the scope of a child pornography statute. There have been no other reported cases, of which we are aware, involving the legality of this work.

On the basis of these rulings, libraries across the country have felt safe in acquiring this book because they have concluded or been appropriately counseled by an attorney, that acquisition or retention of SHOW ME! would not place them in violation of any criminal law.

This conclusion has been reached by small and large public libraries across the United States. The libraries holding SHOW ME! in their collections range from the major urban libraries--such as New York, Boston, Chicago, Los Angeles, Minneapolis, San Diego, Dallas, San Francisco, Salt Lake City, and Philadelphia--to the smaller library systems in such places as LaCrosse and Kenosha, Wisconsin; Lima, Ohio; Jackson, Mississippi; Lincoln, Nebraska; South Bend, Indiana; Tallahassee, Florida, and the St. John Seminary in Brighton, Massachusetts.

Despite the fact that it is entirely legal for libraries to acquire and retain SHOW ME!, and despite the fact that it is the role of libraries in this society to make available and accessible the widest possible diversity of ideas and information, SHOW ME! has been the object of numerous challenges across the country by "anti-pornography" groups. In all but one

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of the challenges reported to ALA, the library boards voted to retain the book in their collections, some with restricted access, others with free access. [In one of these libraries, the two copies of the book were discarded two years later--because of "overuse"--and were not replaced.] The library jurisdictions that voted to retain SHOW ME! after considering demands for its removal include the Monroe County Library System (Rochester, New York); the Great Bend, Kansas library, the Stanislaus County Library (Turlock, California); Seattle Public Library; and the Alameda County Library (Hayward, California).

As consistently as it has been challenged, just as constantly has Show ME! been supported by teachers, parents and psychologists who believe it to be a valuable education book and who attest that the book's photographic nature has been an asset in therapeutic and educational situations. The disagreements about the effectiveness of the work, about its author's perspective on sex education, or even about its possible offensiveness are not factors, however, in the ALA's defense of the right of libraries to make this book available and accessible.

The inclusion of materials in a library's collection does not imply any approval or endorsement by the library's board of the ideas or information contained in those materials. Libraries, among all our public and cultural institutions, are especially responsible for sustaining the diversity and openness that are vital to a pluralistic republic. To this end, they

necessarily keep books that are disapproved of by some, by many, or even by a majority. In doing so, they serve the most profound values of a free society.

SHOW ME! - Litigative History

Droney v. A Book Named SHOW ME! - the Superior Court of Middlesex County, Massachusetts found that SHOW ME! was not obscene and therefore is protected by the First Amendment.

State v. Neilson - transcript of the trial consists primarily of testimony by two experts on behalf of defendants, after which the Portsmouth District Court, New Hampshire, dismissed the action on the ground that SHOW ME! is not obscene.

The District Court of Oklahoma County, Oklahoma, dismissed State v. Robinson before the trial commenced, again on the ground that SHOW ME! is not obscene.

The County Court Judge's Criminal Court for the Judicial District of York (Toronto, Canada) found SHOW ME! not obscene under the laws of Canada in R. v. The Macmillan Co. of Canada.

Library Bill of Rights

The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.

1. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.

2. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

3. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.

4. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.

5. A person's right to use a library should not be denied or abridged because of origin, age, background, or views.

6. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.

Adopted June 18, 1948.
Amended February 2, 1961, June 27, 1967, and January 23, 1980,
by the ALA Council.

Senator LEAHY. Mr. Gates, the hour is late, and I will try to be brief in each of my questions.

It has been suggested by some that Mr. Dwyer is an advocate for pornography in Seattle. Does Mr. Dwyer have that reputation in the Seattle legal community?

Mr. GATES. I would say that Mr. Dwyer's reputation in Seattle is that of a well-balanced, diligent, talented lawyer, and he is called upon, as you have heard here, to participate as counsel in the most important legal matters which come up in our city on all sides.

I think that the people of our community would be astounded at that representation about him.

Senator LEAHY. You have testified to what has to be considered a sterling reputation for a lawyer. In your estimation, did he earn that reputation?

Mr. GATES. Absolutely.

Senator LEAHY. One of the nice reasons to be the chairman is that nobody could object to such a leading question. [Laughter.]

But I think it is fair to get it on the record, and I make no excuse for doing so because it is so in keeping with the letters from people in your area, people who come from very responsible positions, who have said in words one way or the other virtually what you have said here today.

Chief Fitzsimons, as a law enforcement official, do you have any doubt about Mr. Dwyer's willingness to uphold and enforce the child abuse and child pornography laws?

Mr. FITZSIMONS. No, sir.

Senator LEAHY. You have testified about his aid to the Goldmark family, and you are aware of his work in closing down the so-called "children's nightclubs" in Seattle?

Mr. FITZSIMONS. Personally, yes, sir.

Senator LEAHY. Mr. Lasnik, I have a couple of editorials which I will insert in the record, "Library Decision, One for the Books," and "Prosecutor Lets Well Enough Alone." They indicate that your office was involved in the Seattle Library Board dispute over "Show Me" and that you initially, or your office initially submitted a memorandum to the Library Board suggesting that "Show Me" was within the purview of the Washington State Child Pornography Statute. Ultimately, your office decided not to prosecute the Board for retaining the book.

Why was prosecution declined?

Mr. LASNIK. The book was within the purview of the law, because the photos in the book are obviously of a nature that compelled review under the statute; they involve sexually explicit photos of what arguably could be minor children, and in some cases, which obviously are minor children.

We were disappointed that the Library Board refused to exercise its discretion to remove the book. Even if retention were not illegal, we believed the case had been made on public policy grounds that would have justified removal.

As to the issue of criminal prosecution, we did not feel that a prosecution of the librarian or the Library Board was possible under State law.

The book may well be illegal in certain contexts; when found with several sexually explicit photos of young children in the col-

lection of a pedophile, the book is another example of child pornography in that context. If it is utilized in an attempt to lure children into sex acts, the book in its context there may well be actionable. And if it is sold, or in general distribution, those are different fact patterns than we faced, too.

The fact pattern we faced—the book retention; should the library retain the book in its posture as a restricted library reserve book—we concurred with the judgment of Mr. Dwyer and of the City Attorney; we concurred with their analysis that the law did not compel such a result and that retention of the book was not criminal.

Senator LEAHY. On May 6, 1985, the office of the prosecuting attorney issued a press release referring to that. Do you recall that?

Mr. LASNIK. Yes.

Senator LEAHY. I will introduce that in the record at this point, along with the two editorials.

[Information follows:]

FAF-8-12A

OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY COURTHOUSE
516—3RD AVENUE
SEATTLE, WASHINGTON 98104

NORM MALENG
PROSECUTING ATTORNEY

(206) 583-2300

PRESS RELEASE

For Release at:
10:00 a.m.
6 May 1985

FOR FURTHER INFORMATION CONTACT:

Richard H. Holmquist
Chief Civil Deputy
583-4437

The Seattle Library Board has decided to retain the book, Show Me! in its collection despite the fact that the book contains pictures of young children engaged in sexually explicit conduct. In our 4 April 1985 submittal to the library board we shared our general legal analysis of how the book fits within the state's newly revised law on the sexual exploitation of children. We must now determine whether criminal charges should be filed.

While we remain of the view that continuted dissemination of this book perpetuates the exploitation of the children used in its production, we decline to initiate a criminal prosecution.

We reach this decision for several reasons. First, there are significant evidentiary problems that lead us to believe we could not meet a burden of proof beyond a reasonable doubt as to the statutory element of possession "for the purpose of sexual

(over)

stimulation of the viewer". Second, it is difficult to separate issues regarding the photographs in Show Me! from the text of the book, which clearly is protected by the First Amendment, as the deliberative process of the library board reflects.

In the future, as in this present instance, if we receive complaints of apparent violations of these statutes, we will review them carefully to determine if criminal charges should be filed, and in a proper case we would do so.

-30-

'SHOW ME' DISPUTE Times Editorial

5/7/85

Prosecutor lets well enough alone

NOW that the Seattle Library Board has shown its mettle by deciding unanimously (and courageously) to keep a controversial book on the shelves, King County Prosecutor Norm Maleng's office prudently has withdrawn to the sidelines, where it should have been all along.

Last week the board rejected a demand by a Bellevue-based anti-pornography group that a highly explicit sex-education book, "Show Me," be removed from the downtown library collection. Eastside Citizens for Decency Through Law had complained vigorously about the text and especially the startlingly intimate photos showing children and teen-agers engaged in various sexual activities.

Maleng, asked by the group to investigate, did not regard the volume as pornographic. Its producers, including author Helga Fleischhauer, a Swiss child psychologist, say its only purpose was to educate parents in teaching their children about sex.

But the prosecutor said the use of children as photographic models placed the book "within the purview" of a newly revised state law against sexual exploitation of children, a statute aimed mostly at the use of youngsters in porno movies and magazines. Maleng said prior to the board's vote that library officials might be liable to criminal prosecution if "Show Me" remained in the collection.

In this instance, though, the models were Europeans photographed abroad a decade or more ago, and "Show Me" has been in circulation here for years, circumstances that robbed Maleng's position of a sense of urgency.

Yesterday Maleng's office said that, while "we remain of the view that continued dissemination of this book perpetuates the exploitation of the children used in its production," thoughts of prosecuting the Library Board have been laid aside.

A wise course. Pursuing a prosecution would have meant establishing proof that possession of "Show Me" is for the "sexual stimulation of the viewer," required by the state law, and becoming enmeshed in a mass of First Amendment issues when trying to untangle the book's pictures from the text.

The public surely expects the prosecutor to move vigorously against cases involving the sexual exploitation of children. But "Show Me" was not the best case in which to exercise that responsibility.

PI Editorial

Library decision one for the books

Members of the Seattle Library Board made the correct decision, indeed the only decision consistent with their responsibilities, when they voted unanimously to allow "Show Me!" to remain in the library. The only valid reason for the board to remove the book would be if owning and circulating it was proved illegal in a court of law.

Andrea Vangor and the Eastside Citizens for Decency Through Law claim the sex education manual, which includes photographs of children fondling each other and of teen-agers performing sex acts, is pornographic, exploits children and violates a state law banning possession and distribution of child pornography. Barbara Dority and other citizens who urged the board to keep the book consider the "Show Me!" attack an attempt at book banning by people who want to impose their literary and moral standards on everyone else.

A month ago King County Prosecutor Norm Maleng fueled the civic fires by telling the board that "Show Me!" fell within "the purview" of the state law. But attorneys advising the library board said the book is not illegal. Maleng refused to say if he would file criminal charges, but there was no doubt the prosecutor thought the library should take the book off its shelves. Yesterday, however, Maleng announced he would not prosecute because, as we interpret the legalese in his statement, he doesn't think he could prove his case.

Public opinion, as measured by letters written to the library board, was split with about 60 percent against keeping "Show Me!" and 40 percent for.

What we learn from this four-week outcry is that reasonable people are likely to disagree about which books ought to be in a public library and about what is and what isn't pornography. That is why decisions on library books — as long as the books are legal — should be left to professional librarians who, as their code says, work to provide materials "for the interest, information, and enlightenment of all people of the community the library serves."

RECEIVED
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

THE STATE OF WASHINGTON, Respondent, v. HUGH JEFFERSON MARSHALL, Petitioner.	No. 10209-9-II ORDER DENYING REVIEW

Hugh Jefferson Marshall seeks discretionary review of the Kitsap County Superior Court's affirmance of his conviction in district court for possessing child pornography, RCW 9.68A.070.

Petitioner seeks review pursuant to RAP 2.3(d), arguing that (1) the superior court's decision conflicts with existing case law, (2) the case presents a significant question of constitutional law, and (3) the case presents an issue of strong public interest.

(1) The case with which this decision allegedly conflicts is Stanley v. Georgia, 394 U.S. 557 (1969). Stanley held unconstitutional a statute making it unlawful for a person to possess obscene materials. The law was held to violate the right of free speech, i.e., to receive information for personal use in the privacy of one's home. Stanley, however, does not address one's right to possess

child pornography. Child pornography is not protected by the First Amendment. New York v. Ferber, 458 U.S. 747, 763-64 (1982). In the interests of drying up the market for material that involves the exploitation of children, the states may impose severe penalties on persons selling, advertising, or otherwise promoting the product, 458 U.S. at 760, as long as the statute sufficiently describes a category of material unprotected by the First Amendment. Id. at 765. If such material is not protected by the First Amendment, then its mere possession is not approved by Stanley v. Georgia. Here, the stipulated facts are that the material not only falls within the statutory definition of child pornography in RCW 9.68A.011, but also is of a kind that the State may regulate as outside the First Amendment's protection. See New York v. Ferber, 458 U.S. at 764-66. Petitioner has not shown that the trial court's decision conflicts with any existing case law.

(2) Although the case presents an interesting question of constitutional law, as the foregoing discussion shows, that law is largely settled in favor of the State's position. Ferber makes clear that child pornography of the kind petitioner possessed is not, contrary to his argument, entitled to First Amendment protection. It is harmful material whose possession may be outlawed in the interests of combatting the exploitation of children. See Ferber, 458 U.S. at 758-60. Review is not warranted on this issue, either.

(3) The case does not appear to present an issue of strong public interest so as to warrant acceptance of review. Petitioner makes no showing that the general public has an interest in knowing whether it can lawfully possess the kind of material that he owned. The issue appears to be

settled as a matter of law, in any event. Accordingly, it is hereby

ORDERED that this motion for review is denied.

DATED this 2nd day of October, 1986.

Mark H. Adams
Court Commissioner

cc: Lucretia Fishburn
Michael Klemetsrud
Honorable Robert L. Charette
Kitsap County Clerk
Kitsap County District Court

Senator LEAHY. Are you familiar with the case of *State of Washington* v. *Hugh Jefferson Marshall* that Dr. Vangor mentioned today?

Mr. LASNIK. I only became familiar with it yesterday, and Mr. Dwyer's office in Seattle did some digging. The reason that I was not familiar with it, and apparently Mr. Dwyer was not familiar with it—it is not a reported opinion, it has no precedential value. Washington State is a State that has a State supreme court, an intermediate court of appeals, a trial court which is called a superior court, and a court of limited jurisdiction, which is a district court. The district court hears traffic infractions and misdemeanor and gross misdemeanor criminal cases in addition to small claims. It is a court of record in the sense that things are recorded, but an appeal does lie from a district court decision to superior court where a superior court judge will put on the headphones, listen to the tape, and affirm or deny. You do have a discretionary appeal right to the appellate court, and always a discretionary appeal right to the supreme court.

The report we received from the law office in Seattle was it was a district court prosecution of one count of sexual exploitation of children, with 62 different items included in the charging document, most of which would be considered obvious and hard-core pornography, one of which was "Show Me."

The judge entered a verdict of guilty. An appeal was made to the superior court—simply no written order or anything, just an affirmance. The discretionary review was denied by the court of appeals. So it has no precedential value. I did not know about it until yesterday.

But as I indicated in my earlier answer, if "Show Me" is found with 61 other items of obvious child pornography, I have no doubt that it is illegal and actionable, and could have been the subject of a separate prosecution.

I have spoken to Mr. Dwyer about that, and he shares my opinion.

Senator LEAHY. And you do not disagree, though, with the opinion that he rendered to the library?

Mr. LASNIK. We concurred in the opinion that he gave to the Seattle Public Library.

Senator LEAHY. Mr. Zeitner, I referred to your statement, along with that of Mr. Crosby earlier, and the effect it has had on me and I think it will have on the panel. I will ask you basically the same question that I asked Mr. Crosby. You are a concerned parent. You are a citizen of Seattle. You know Mr. Dwyer. Do you think there is any reason to doubt that he will uphold and enforce the laws in child abuse and child pornography?

Mr. ZEITNER. Absolutely none, Mr. Chairman.

Senator LEAHY. Thank you.

Ms. Krug—and we will make sure that the record has your first name spelled correctly.

Ms. KRUG. Thank you.

Senator LEAHY. I have the feeling, looking at the way it is spelled, that somewhere the computer dropped a couple of letters. That is one of the beauties of the computer age; we can all blame

the computer. And if you fly as much as I do, you hear that line a lot.

To your knowledge, has any library been sued or prosecuted under the child pornography laws for retaining the book "Show Me?"

Ms. KRUG. No.

Senator LEAHY. Do you feel that you would be aware of such a suit or a prosecution?

Ms. KRUG. Oh, absolutely.

Senator LEAHY. Thank you. Is that your job, to keep track of those kinds of things?

Ms. KRUG. That is part of my job.

Senator LEAHY. I yield to the distinguished senior Senator from South Carolina.

Senator THURMOND. Thank you, Mr. Chairman.

Senator LEAHY. And I also might say, if I may, that I appreciate the fact that Senator Thurmond is here. When I sometimes feel I have had to spend a lot of time at all these hearings, I should note that he has spent just as much time, and I mention that because I appreciate so much the amount of time and effort he has put into these hearings.

Senator THURMOND. Well, thank you. It is mutual.

Mr. Gates, I believe you said you are a Republican, aren't you?

Mr. GATES. Yes, sir.

Senator THURMOND. We received a resolution here by the Washington State Republican Party that reads this way:

President Reagan won the 1984 election by a landslide victory in 49 States.

Whereas, President Reagan has the Constitutional right and duty to nominate principal performance of the Federal judiciary.

Whereas, President Reagan has clearly stated his desire to nominate individuals who strictly interpret the Constitution and legislation according to the terms and intentions of the Framers.

Whereas, it is traditional for Senators to submit several names to the President for consideration in filling a vacancy on the Federal Bench.

Therefore, we believe that the nomination of a single individual with an activist judicial philosophy such as William Dwyer is out-of-step with both tradition and the desires of President Reagan.

Did you have any part in forming this resolution?

Mr. GATES. None whatsoever.

Senator THURMOND. Do you know anything about it? Did you know it was done?

Mr. GATES. I have a recollection that there was some publicity in the press that such a resolution had been adopted.

Senator THURMOND. Are you active in the Republican Party in Washington?

Mr. GATES. Not the part of the Party that did that.

Senator THURMOND. Well, this says "Washington State Republican Party." I just wondered if you were active in that Party.

Mr. GATES. I was being captious.

Senator THURMOND. Pardon?

Mr. GATES. I was being captious, Senator. I was not involved in that action.

Senator THURMOND. We have a letter here, too, from members of the Washington State Senate, opposing the nomination of Mr. Dwyer. Are you familiar with that? That is the Republican Caucus.

Mr. GATES. I am aware that there are a few members of the State Senate—yes, sir.

Senator THURMOND. The Republican Caucus of the Washington State Senate. Are you familiar with that?

Mr. GATES. I am aware of it, yes, Senator.

Senator THURMOND. We have a letter from the House of Representatives of the State of Washington, taking a similar position. Are you familiar with that?

Mr. GATES. From the House of Representatives?

Senator THURMOND. The House of Representatives.

Mr. GATES. Does it purport to be the House?

Senator THURMOND. Well, this is from the Assistant Republican Floor Leader.

Mr. GATES. I am aware that——

Senator THURMOND. Are you familiar with that?

Mr. GATES. Generally, yes.

Senator THURMOND. I just wondered if the Republican Party in Washington—if this represents the thinking of the Republican Party in the State of Washington, or are these letters and resolutions not consistent with the thinking of the Republican Party in Washington State?

Mr. GATES. There are people in the room who know a lot more about that than I do. I would say that the actions of the Republican Party could well be characterized as the actions of a small part of the Republican Party.

Senator THURMOND. Well, I guess the rest of them did not attend, then?

Mr. GATES. Very few of them attended.

Senator THURMOND. It seems they would have indicated, then, it was just the minority Republican Party, although it says "Washington State Republican Party."

Mr. GATES. It is the capital "P" Republican Party.

Senator THURMOND. Speak up so I can hear you.

Mr. GATES. I would say that it is in fact the action of the Republican Party with a capital "P", but I do not think that it represents the views of the majority of the Republicans in the Western District of Washington.

Senator THURMOND. In other words, you think the resolution sent, then, does not represent the majority of Republicans in Washington State?

Mr. GATES. That is exactly what I think; it does not represent the view of the majority of the Republicans in Western Washington.

Senator THURMOND. I see. Thank you.

[Aforementioned material follows:]

WASHINGTON STATE REPUBLICAN PARTY

Jennifer B. Dunn
Chairman

1986 PLATFORM

9 Lake Bellevue Drive
Bellevue, Washington 98005
(206) 451-1986

Washington State Republican Party

RESOLUTION

WHEREAS, President Reagan won the 1984 election by a landslide victory of 49 states; and

WHEREAS, President Reagan has the Constitutional right and duty to nominate persons for appointment to the Federal Judiciary; and

WHEREAS, President Reagan has clearly stated his desire to nominate individuals who strictly interpret the Constitution and legislation according to their terms and the intention of their framers; and

WHEREAS, it is traditional for Senators to submit several names to the President for consideration in filling a vacancy on the Federal bench.

~~THEREFORE, we believe that the nomination of a single individual with an activist judicial philosophy, such as William Dwyer, is out of step with both tradition and the desires of President Reagan.~~

RESOLUTION

WHEREAS, the Executive Director of the Association for Supervision and Curriculum Development has endorsed a World Core Curriculum; and

WHEREAS, the Council of Chief School State Officers called for more internationalism in the curriculum and has established a Center for Coordination of Educational Assessment and Evaluation which will promote coordination among international, national and state assessment programs; and

WHEREAS, the National Education Association and American Federation of Teachers have endorsed the concept of a National Standards Board, thus usurping local and state control;

THEREFORE BE IT RESOLVED, that the Washington State Republicans ask the State and National Legislators to pass legislation to curtail this.

RESOLUTION

WHEREAS, Washington State is now exchanging teachers with Communist China, and

WHEREAS, Washington State tax dollars have been expended on manuals promoting the development of global or international education in the entire curriculum,

THEREFORE BE IT RESOLVED, that the Washington State Legislature be directed by the Washington State Republican Party to implement legislation to cut off funds for curriculum promoting international loyalty.

Washington State Senate

Republican Caucus

Jeannette Hayner, Republican Leader
Dan McDonald, Floor Leader
Alex Deccio, Assistant Floor Leader

George Sellar, Caucus Chairman
Bob McCaslin, Vice-Chairman
Peter von Reichbauer, Whip
Hal Zimmerman, Assistant Whip

MAR 11 AM 86 28

March 7, 1986

The Honorable Ronald Reagan
President of the United States
The White House
Washington, D. C. 20500

Dear Mr. President:

With total dismay we have read in the local newspaper that Attorney General Edwin Meese intends to appoint William Dwyer to a Federal Judge position for Western Washington. Mr. Dwyer is a liberal Democrat that without a doubt does not fit your philosophy.

Please closely review this nomination because we believe it would be an appointment that would not be in the best interest of the people of the State of Washington or your administration.

Sincerely,

Members of the Washington State Senate

cc: Mr. Edwin Meese III, Attorney General
The Honorable Paul Laxalt, Senator, State of Nevada

Legislative Building • Olympia, Washington 98504 • Telephone (206) 786-7566

Note: Each [illegible] of this letter to the President.

JEAN SILVER
FIFTH DISTRICT

OLYMPIA OFFICE
LEG. BLDG. 423
OLYMPIA, WA 98504
(206) 586-7832

RESIDENCE
N. 7402 AUDUBON DRIVE
SPOKANE, WA 99208
(509) 326-4965

REPUBLICAN ASSISTANT FLOOR LEADER
CHAIR, HOUSE ETHICS BOARD

1986 MAR 11 PM 3:

House of Representatives
STATE OF WASHINGTON
OLYMPIA

March 7, 1986

Honorable Ronald Reagan
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

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Sincerely,

Jean Silver

JEAN SILVER
Assistant Republican Floor Leader
Fifth Legislative District

JS:sl
cc: Mr. Edwin Meese III, Attorney General
Honorable Paul Laxalt, Senator, State of Nevada
Honorable Strom Thurmond, Senator, State of South Carolina

Senator THURMOND. Mr. Lasnik, I wanted to ask you a question. I notice that King County Prosecutor Mr. Norm Maleng—I believe that's how you pronounce it——

Mr. LASNIK. Maleng.

Senator THURMOND. Is he your boss?

Mr. LASNIK. He is indeed.

Senator THURMOND. We have a clipping here of Sunday, April 7, 1985. It says, "Sex book violates State law, says Maleng." And the first paragraph reads: "The controversial sex education book, "Show Me," might not be pornography, but it does violate State law against the sexual exploitation of children, according to King County Prosecutor Norm Maleng."

Do you agree with that statement?

Mr. LASNIK. No. That is an inaccurate reporting.

Senator THURMOND. Inaccurate reporting?

Mr. LASNIK. Right. Mr. Maleng——

Senator THURMOND. In other words, Mr. Maleng did not say this?

Mr. LASNIK. Not in that context.

Senator THURMOND. Did he ever correct it?

Mr. LASNIK. In other stories, yes.

Senator THURMOND. These are big headlines—and you deny that he made this statement?

Mr. LASNIK. In the context in which that newspaper article was written, they were coming to a conclusion based on a preliminary analysis which we had done, which indicated it was within the purview of the statute, Senator. And journalists sometimes come to conclusions without all the facts.

Senator THURMOND. Do you feel that this book does violate the State law?

Mr. LASNIK. I believe that in certain contexts, possession and distribution of that book would indeed violate the State law.

[Article follows:]

Sex book violates state law, says Maleng

by Susan Gilmore
Times staff reporter

The controversial sex education book, "Show Me," might not be pornography, but it does violate state law against the sexual exploitation of children, according to King County Prosecutor Norm Maleng.

In an 11-page report sent Friday to the Seattle Library Board, Maleng said the issue is not whether the book is legally obscene, but whether the children were illegally used as models.

However, Maleng stopped short of saying whether his office would try to force the library board to remove "Show Me" from library shelves.

Although the book has been in local libraries for years, it has come under fire recently because of a new state law that makes it a crime to distribute books that sexually exploit children.

"Show Me" was published in the United States in 1975 as a sex education book. But it has been the subject of numerous court challenges because of its pictures that show nude children and teen-agers fondling each other, masturbating and participating in other sex acts. Subsequently, the book's publication was halted.

The library board asked for public comment on the book and will schedule a special meeting to decide whether it should remain in the library.

Some 300 responses are on file at the downtown library in a thick red binder. Included are scratched notes from parents decrying the book to long dissertations by civil libertarians defending it.

Maleng's report came as no surprise. A month ago he said he had reviewed the book and decided it is not appropriate under the new state law protecting children.

"Clearly the book . . . is within the purview of the language of this state's law against the sexual exploitation of children," wrote Maleng's assistant, Robert Lasnik. Although the children were photographed with their parents' consent, said Lasnik, "the fact remains that the children were in no position to give their informed consent. They were exploited."

Lucy Berliner, with the Sexual Assault Center at Harborview Medical Center, wrote the board that the book is child pornography.

But the American Civil Liberties Union submitted a lengthy defense of the book and Dr. William Womack, a child psychiatrist, said the book should not be pulled. He said the photos may be explicit, but the book uses "whimsy and humor" to educate.

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Senator THURMOND. Have you looked at this book?

Mr. LASNIK. I have looked at it, yes, sir.

Senator THURMOND. Do you consider it pornography?

Mr. LASNIK. I consider it an extremely obnoxious book that, in most contexts——

Senator THURMOND. This is the first time I have seen the book, today.

Mr. LASNIK. I think you will agree with me, Senator, that it is a very obnoxious book, that the pictures are very offensive to most people. And I think that in most contexts, its possession and distribution would violate strict child pornography laws.

Senator THURMOND. I think this book would be repugnant, not only to families that have children, parents, like I do, but I think this book would be repugnant and offensive because it is simply indecent. Do you agree with that?

Mr. LASNIK. I found the book to be indecent, repugnant, and offensive. I agree with those adjectives for the book.

Senator THURMOND. Do you feel that this book has educational value?

Mr. LASNIK. I think that I have seen enough evidence from educated people who say that it has educational value that I am willing to concede it might have some. That is not enough of a reason to keep the book in circulation or to allow people to freely distribute and possess it.

Senator THURMOND. Mr. Lasnik, how could you say that it may have educational value when it is completely indecent; it is offensive; and any mother or father of a child would not want this book in their home—and if you have not looked at it again, I will pass it down to you now and let you look at it and see if you have a different opinion.

Mr. LASNIK. Well, Senator, it is educational in the sense that it has been the subject of so many Senate hearings such as this, so many court cases. I think it is an example of a viewpoint that society was moving towards in the Sixties and early Seventies that I think we have rightfully rejected now. It has some historical basis to indicate what a lot of people—Freudian psychotherapists—found might have some value in regard to sex education.

I personally reject it completely.

Senator THURMOND. What kind of value could this indecent book have?

Mr. LASNIK. Please, Senator, do not make me defend the book; I am not a defender of the book.

Senator THURMOND. Showing little children in the nude; showing their sex organs—what educational value could that have?

Mr. LASNIK. The court cases which occurred throughout the country had witnesses who were psychiatrists, psychologists, sex therapists, who testified to the educational value. I do not agree with it. But what I said, Senator, is so many people of note have claimed that it has educational value——

Senator THURMOND. Do you want your people back in Washington State, who you represent, to have a statement from you that this book has value from an educational standpoint?

Senator LEAHY. Wait, Senator. In fairness, that is not what he testified. Let us be sure that we put his testimony in the way he testified.

Senator THURMOND. I am asking questions. You can ask him any you want to.

Mr. LASNIK. That is fine, Senator. I note Senator Thurmond to be a vigorous cross-examiner. We in Seattle who did not really know the Senators have had a wonderful opportunity to see them through C-SPAN, and I have been very impressed with the confirmation hearings that we have had an opportunity to—we watch it more religiously than ESPN now, in the prosecutor's office. So it is perfectly okay, Senator Leahy.

Senator Thurmond, what I said is I will concede for the sake of argument some people of education and profession say it has educational value. I will say even if it does have educational value, the book is illegal in almost all contexts and is prosecutable in almost all contexts, regardless of educational value.

If you ask me, "Mr. Lasnik, do you think it has educational value?" I say no, it does not.

Senator THURMOND. Is this the kind of book that you want to be in the library for your children and your wife to see?

Mr. LASNIK. From a public policy perspective, I do not want it in the Seattle Public Library. And that was what we argued for.

Senator THURMOND. It is amazing to me that anybody could look at this book of nude children, showing their sex organs and showing them in different positions, and indicating sexual postures, to say that this book is of any value whatsoever to the public and to the common good and to the decency of humanity.

Do you agree with that?

Mr. LASNIK. I agree with that personally, but I have seen enough people of profession and education who have said otherwise that I am willing to say that I have an open mind for the sake of argument, that there may be some value there. To me it is irrelevant; whatever minute value it has is way outweighed by the offensiveness and the exploitation of the children.

Senator THURMOND. Chief, you are chief of police out there?

Mr. FITZSIMONS. Yes, sir.

Senator THURMOND. Have you seen this book?

Mr. FITZSIMONS. No, sir, I have not.

Senator THURMOND. Hand it down to him. I want to ask you a question.

Turn to pages 46, 48, 50, 51, 52, 53, 55, 60, 62, 63, 64, 66, 67, 70, 71, 74, 75, 80, 81, 84, 85, 86, 87, 88, 89, 92, 93, 94, 95, 96, 97, 98, 99, 104, 105, 106, 107, 112, 113, 114, 115, 126, 149, 153, 156, 157, 158, 163, 164, 165, 170, and 171.

Senator LEAHY. Make sure you do not miss a one; make sure you do not miss a one of those, now.

Senator THURMOND. You just open to any one of those pages. Start on page 46, and then go to 48.

Mr. FITZSIMONS. Senator, I——

Senator THURMOND. Every one of those pages I called out shows an indecent picture; it shows children in the nude; it shows the exploitation of children. I want you to look at it and see what you think about it.

Mr. FITZSIMONS. I can quickly flip through it, but I do not have any trouble with answering any of your questions, sir.

Senator THURMOND. Turn to page 46. Now, you are a chief of police.

Mr. FITZSIMONS. Yes, sir.

Senator THURMOND. And as chief of police in your city, I am just wondering if you would approve of a book like this being used to exploit children

Mr. FITZSIMONS. Absolutely not. I do not think the police have any trouble answering any of your questions, Senator.

Senator THURMOND. Do you feel that a book like this in a library would be beneficial to the common good and would be beneficial to the parents in the community and the children in the community?

Mr. FITZSIMONS. No, sir.

Senator THURMOND. Now, Mr. Zeitner, are you familiar with this book?

Mr. ZEITNER. Yes, I am, Senator Thurmond.

Senator THURMOND. Well, give us your opinion about it.

Mr. ZEITNER. I would, as a Christian and as a conservative, agree with Ms. Vangor and her analysis of the book. We worked last year together on a coalition. Ms. Vangor was a member of the coalition for some time. She brought the book to our coalition meetings and indicated to us that she was going to go to Olympia with the book and show it to our legislators and get their opinion, just as you have done. And we are all familiar with the book, sir, and we all reject it whole-heartedly as Christians and as conservatives.

Senator THURMOND. Do you feel that this book should be in a library where your wife and children while looking for children's books might come across it?

Mr. ZEITNER. Absolutely not, sir.

Senator THURMOND. Ms. Krug, give us your opinion about the book, if you are familiar with it.

Ms. KRUG. I'm very familiar with it. The book is legally available——

Senator THURMOND. I can't hear you.

Ms. KRUG. The book is legally available, and as such, it is appropriate in any library collection that so chooses it.

Senator THURMOND. Although it may be against the law, you think it ought to be in the libraries.

Ms. KRUG. If it is against the law, I suggest that a case be filed, and we will just go through the judicial process. That's what it's there for.

Senator THURMOND. You heard what Mr. Lasnik said, that he thought it was against the law, and therefore shouldn't be in the library.

Ms. KRUG. He has yet to file suit.

Senator THURMOND. And what organization do you represent?

Ms. KRUG. The American Library Association. The oldest and largest library association in the world.

Senator THURMOND. I think I've said all that needs to be said. I wish to thank you all for appearing and testifying.

Senator LEAHY. Senator Grassley.

Senator GRASSLEY. No questions.

Senator LEAHY. Thank you, Senator. I would ask you each now, if you were a member of the U.S. Senate, and you saw that President Reagan had nominated Mr. Dwyer to be a Federal judge, and you were asked to give your advice and consent, to vote either yes or no on the Dwyer nomination, Mr. Gates, how would you vote on the Dwyer nomination?

Mr. GATES. Yes.

Senator LEAHY. Chief Fitzsimons, how would you vote on the Dwyer nomination, yes or no?

Mr. FITZSIMONS. I've made my statement. Yes.

Senator LEAHY. Mr. Lasnik, how would you vote on the Dwyer nomination, yes or no?

Mr. LASNIK. Yes, Mr. Chairman.

Senator LEAHY. Mr. Zeitner, how would you vote on the Dwyer nomination, yes or no?

Mr. ZEITNER. Yes, and I believe every parent in the organization that we represent would also.

Senator LEAHY. Ms. Krug, how would you vote on the Dwyer nomination, yes or no?

Ms. KRUG. Yes.

Senator LEAHY. Thank you. I thank you all for being here.

Mr. Dwyer is still here, and I would ask him to come back to the table, but also Senator Evans. You've been here all day today. Please come up here too.

Again, I would note, as I noted at the last hearing, it's extraordinary when a member of the U.S. Senate is able to stay, other than as a member of a committee, all the way through a hearing, even a hearing involving a nominee from his own State.

I complimented you at that time, Senator, and I compliment you again.

If I can also just take the chair's prerogative, I've heard your announcement this week, that you are not going to seek reelection. Let me say, as a member of the other party, that the Senate was enhanced by your presence in the Senate, and it will be diminished when you leave.

Now, Mr. Dwyer, you are still under oath from the earlier testimony.

I have just a couple of questions for you. The first is——

Senator EVANS. I wonder, Mr. Chairman, if I might take just a minute of your time.

Senator LEAHY. I'm sorry, Senator Evans. Of course you can.

STATEMENT OF HON. DANIEL J. EVANS, U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator EVANS. I had the privilege of introducing Mr. Dwyer at the previous hearing. I won't attempt to repeat what I said then, except that my admiration and support for him has increased rather than decreased during the course of the last month, at the hearings to date, and from listening to the testimony today.

I think most of my colleagues have read—probably not many have heard, because we don't tend to be on the Senate floor to listen to each other's debate, unfortunately—when I, after consider-

able thought and determination, gave my reasons for supporting Judge Bork.

Among those were the feeling that he had been unfairly characterized, that at times he had spoken out on behalf of legal principles which he may not have personally supported, but understood that there is a difference between your own personal philosophy and the judicial determinations you are called upon to make.

You have got to give a legal opinion, as a judge or a lawyer, depending on what you think the law is, and what you think the Constitution is, and how it should be interpreted. And I thought that at times he had been unfairly characterized as examining the Constitution and saying, "This is the way it should be interpreted," and being convicted of believing all of those things personally.

And listening to the testimony this afternoon, Mr. Chairman, I think there has been something of that same thing happening. And I believe, strongly believe, and I think those who just have finished their testimony in strong support of Mr. Dwyer believe as well, that the tempest in a teapot, which is what I call it, on this particular book, is nothing more or less than a lawyer attempting to give his best advice, based on his interpretation and understanding of the law as it exists, and has nothing, absolutely nothing, to do with his own particular feelings about the book itself personally.

And I just think that it's terribly important for us to understand that, and to say that.

Senator LEAHY. Thank you.

Senator EVANS. Thank you Mr. Chairman.

Senator LEAHY. Mr. Dwyer—he's already been sworn, he's still under oath.

We have had a lot more debate about a book that we all find offensive than we have about your credentials, credentials which everybody who has addressed them seems to have said are of the highest nature.

Certainly you have been given an American Bar Association rating which goes off the charts, which is given only to a tiny fraction of the people who come before us for any judicial position. I am not about to sit here and debate the merits of a book which, as I have said, I find offensive, or at least the little bit of it I saw when Senator Thurmond was leafing through it here today.

So I would like to get back to the questions at hand—you as a federal judge, your legal qualifications to be there, and your judicial philosophy that would be represented on the bench.

On the questions that have been asked here today, let me just ask you. Can you assure the committee that, if you are confirmed, you will follow, uphold, and enforce the valid Federal and State child pornography laws?

TESTIMONY OF WILLIAM L. DWYER, OF WASHINGTON, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

Mr. DWYER. Yes. Of course, Mr. Chairman, I could and will do that if confirmed.

Senator LEAHY. In fact, your oath of office would require it, would it not?

Mr. DWYER. Yes, it would. The trial judge's job is to apply the law faithfully and correctly as it's given to him or her by the Congress and by the appellate courts.

Neither I nor anyone else of any substance as a lawyer would even consider letting his name go in for a Federal judgeship unless that person is fully prepared to accept that responsibility.

Senator LEAHY. Mr. Dwyer, there have been all kinds of statements I've heard, both earlier and today, and it's hard to keep track, really, of what was in the legal opinion you delivered to the Seattle Library Board about the book "Show Me."

In fact, you probably, as you have heard all the varying descriptions of what was said, or why, or how, you are probably wondering just what did happen yourself. So why don't you tell us what your legal opinion was, how you came to give the opinion—just go through the steps. Who asked you for the opinion, what was the opinion based on, and what did you say?

Mr. DWYER. I'd be glad to. The matter first came to us from the Seattle Public Library, with a request that I advise them in the difficulty they were having over this book.

They were being confronted with conflicting demands, one group claiming the book was illegal as maintained by the library, the other group maintaining that if they removed the book, they would be violating the free-speech rights of that group.

They felt the need for private counsel, so they asked the city attorney to retain me as a special city attorney for this purpose, a special assistant, and I agreed to serve.

And I must say, by way of preface, I have thought a lot over the last few weeks as to whether I would do this again, whether I would take this assignment again, knowing what I know now about the furor it has caused. And the answer is yes. I would take it again, because as soon as you start turning down legal matters out of fear of what they're going to do to your personal career, you might as well hang it up and stop being a practicing lawyer.

I knew, of course, that with the emotion that goes with this subject, that whatever advice I gave, it could readily be misinterpreted by anybody who disagreed with it, but I felt strongly the obligation to say yes when asked to do this, and I did do it.

I had had no prior work as a lawyer, in any way, shape, or form, with the child pornography laws, which had started coming into existence, I believe, in the late 1970s. From what I do know of the field, my impression is that nearly all the materials that come before the courts under the child pornography statutes present little or no problem. Most of them are clearly illegal, and the defendants are convicted and sentenced.

The facts in regard to a public library having "Show Me" in its collection are probably just about unique. I think they are quite unlikely to recur.

We have to be clear in assessing my opinion or anyone's opinion, I believe; we must be clear as to the difference between a lawyer's personal opinion of a book and his legal opinion. No one, I think, of any persuasion wants a lawyer to act as a one-man censor board, and try to get books removed from the library because they offend his personal taste.

"Show Me" is not a book I would have in my house. But we live in a diverse and open society, and many parents, counselors, and doctors highly recommend this book for use in sex education. I do not, and I feel strongly against its use, at least by anybody I have any connection with.

It's a subject that arouses strong feelings, but our job as lawyers is to put aside any personal feelings, pro or con, and give the correct legal answer.

Now the basic question, for the city attorney and myself, was whether the library would be violating any law, that is, committing a crime, if it continued to keep "Show Me" in its collection. We reviewed it under both the general obscenity laws and the child pornography laws.

The library had had the book for about 10 years at the time this came up in 1985, and it kept the book on a reference-only basis. The book cannot be checked out.

Most of the research was done by one of my junior partners. She and I ended up agreeing that a court would probably not find the library was committing a crime if it continued to keep the book.

Now, in describing my reasoning on this or any other subject, I am not going to change my mind. I have nothing against changing my mind, but the analysis I will give you is essentially the same analysis that I held at the time and explained at the time to my client in private attorney-client conversations.

First of all, my partner and I found that five courts had already considered this book "Show Me." Four courts had considered it under general obscenity statutes, three in the United States and one in Canada, and in each court, it was found legal to continue the distribution of this book. The book, in other words, was found to be not violative of obscenity laws as sold to the public.

The fifth case was a 1979 civil case in the U.S. Court of Appeals for the Second Circuit in New York City. In that case, the publisher had sued the Governor of New York, seeking an injunction against anybody prosecuting the publisher for selling the book. The case was brought after New York adopted its child pornography statute.

The second circuit ruled that the publisher could not have an injunction because there was no case or controversy. The primary reasons that they found no case or controversy were, number one, the prosecutor said he wasn't going to do anything, that he had no plans to proceed against the book, and therefore it wasn't a real controversy; and the second reason assigned by the Court of Appeals in New York was that the book probably, in any event, would not come within the scope of a child pornography statute.

So those were the five precedents we had to work with, and to this day, having rechecked the records, and asked other people, I am confident that those five are still the only reported cases involving this book.

Well, we believed that a court in the State of Washington, if it came to a court test, would probably find, first, that the purpose of the child pornography statutes is to protect children by preventing their being used in works of pornography. In other words, the protection is directed more to the children who would be the victims

used in such a production, rather than to the reader who might be corrupted by reading it.

And in that regard, the legislative aim of protecting the children, we thought a court would find that the photographs in the book were all taken several years before any of the American child pornography statutes came into existence; that they were taken in a foreign country, West Germany, with the consent of the parents; and that they were apparently legal at the time and place they were made, and apparently in accordance with the mores of that society at the time and place they were taken.

Third, it appeared likely that a court would find that the photographs were taken and the book was published for the legitimate purpose of sex education. It was published in Germany by a Lutheran-Church-sponsored publishing company.

Fourth, the court would seem likely to find that the text of the book is serious and educational, that is, the written part, and that the book as a whole has substantial, genuine, educational value. That holding, that it had that substantial value, had in fact already been made by courts in the United States in three different jurisdictions. So that prediction was based on holdings that had already been made.

Fifth, we believed that a court would likely find that it was not clear that any of the photographs could be proved to come within any of the categories prohibited by the Federal or State statute. That was one of the bases for the second circuit's decision that I mentioned; they said that it was not at all clear to them that any of the photos came within the definitions of the New York child pornography statute.

Sixth, we believed that a court would find that this is a book kept in a public library on a reference-only basis—I'm talking about the Seattle library—not available to be checked out, and that it was not a book being sold or distributed. We felt that the court would be likely to make a distinction between prohibiting further distribution of a book on the one hand, and on the other hand hunting down every last copy of it in every library in the United States and destroying it.

The Federal statute requires that the defendant transport, ship, mail, receive, or distribute the material in question, and it appeared likely that under the Federal statute the prosecution would have considerable difficulty in establishing that a library's retention of the book would come within any of those terms. I believe Mr. Taylor testified a couple of hours ago to his belief that the Federal Statute did not apply for that reason.

As far as the State statute was concerned, there were other reasons having to do with the wording of the statute that made it doubtful.

Seventh, we believed a court would find that the book is kept in the collections of leading public libraries across the United States. Eighth, we believed the court would find that no other court had held it illegal to publish, distribute, or sell this book, much less to keep it in a public library. In fact, to the best of our knowledge, no prosecutor in the country had even charged a library for having this book, and to the best of our knowledge, that's still true today.

Those factors, when taken together, meant, in our opinion, that a court probably would say that the goal of the statute, the child pornography statute, can be achieved and is being achieved without applying it in a situation such as this, a library holding a book on a reference-only basis, as to this book.

I told the board that they could get a definitive answer in court by filing a declaratory judgement suit against these competing groups who were arguing about the book. I thought at the time, and I still think, that would have been a desirable procedure.

The board did not want to do that, because they did not want to set the precedent of initiating litigation on a book in their own collection. They did expect, and I expected, that the anti-pornography group would start a lawsuit if they decided to keep the book, but that did not happen.

Apparently, the same decision reached by the Seattle library about this book has been reached in many other library jurisdictions, including some of the most distinguished libraries in the country, including, as we've noted, the Library of Congress itself.

My advice, of course, did not require that the Seattle Public Library keep the book. The board and the staff could have decided to remove it on grounds of taste, or suitability, or other non-legal criteria. They decided to keep it for the reasons set out in the librarian's memo of May 3, 1985, which is part of the record before you.

That decision, made on a policy basis by the library, did not involve either the city attorney or myself.

At the time, and afterward, we understood that the law enforcement authorities in our community had no disagreement with our legal advice, and I still believe that is true.

Two and half years later, I still would be glad of a court proceeding that would test this proposition one way or the another, because I think the way things stand now, this can be used and is being used as a kind of aggravating, prolonged argument, which really should be resolved in a court of law.

Today, after reviewing over the last several days the advice I gave, I still believe the advice was correct. If I had it to do again, and I were practicing law actively in Seattle today, and the Seattle Public Library asked me to help them again, I would help them again.

Senator LEAHY. Thank you. Mr. Dwyer. Your answer saying if you were asked to help again, you would do it, is clearly in the finest tradition of the bar, and I applaud you for it. If lawyers are unwilling to take on controversial cases, if they are unwilling to provide the legal representation that really should be the right of all Americans, then those rights no longer exist, and we deserve to lose them, so I applaud you for that.

Do you believe that if a book or film possesses social or educational value, that that fact alone will exempt it from the child pornography statutes? Just that fact standing alone.

Mr. DWYER. I do not, Mr. Chairman, and again I want to emphasize, this is not a change in my point of view. I believe educational value is a factor, but I do not believe that it provides an exemption from these child pornography laws. Let me explain, if I may.

When the Senate and the House were considering passage of the Federal child pornography statute, the Department of Justice rep-

resentative testified that his department, quote, "does not view the bills I have discussed as designed to reach legitimate sex education material," unquote.

That, of course, came in this administration from a very vigorous, in this field, Department of Justice.

The State of Washington statute contains a similar disclaimer in the preamble to the statute. It says that the statute, quote, "should not inhibit legitimate scientific, medical, or educational activities," unquote.

Now these two statements, in the legislative history of the Federal statute and in the preamble to our State statute, would permit an argument to be made that works of genuine educational value are simply not covered by these laws. However, I do not believe that it will be that simple.

Let's put the question like this. Could someone today, in the United States, hire some street children to pose for sexually explicit photographs of the kind prohibited by the statute, place those photographs in a book having substantial educational value, and then sell the book over the counter without having to worry about the child pornography laws?

My answer is, I do not believe so. This is a question that the Supreme Court, in the famous *Ferber* case, did not decide. They said they would put off that question to another day, because the material that was involved in the *Ferber* case was absolutely and plainly without value. So they left that question for another day.

Justice Brennan's concurring opinion might lead us to one conclusion and Justice O'Connor's to the opposite. My own guess is that substantial value alone, as the law develops in this field, will not be enough to rescue a book from the child pornography laws. I believe that the main test will be whether children were exploited or victimized in the making of the book or film, particularly if that happened in the United States since these laws were adopted. If those facts are shown, I would expect that one who sells such a book can be convicted, even if the book has substantial value.

But apparently this is a very rare situation because the question seems not to have come up in the courts, at least to the best of my knowledge, in the 5 years since the *Ferber* case was decided.

Senator LEAHY. Did you tell the Seattle Library Board that the fact that "Show Me" might possess social and educational value, that that would take the book outside the scope of the child pornography laws?

Mr. DWYER. No, I did not. I listed a combination of factors that I thought probably would place the library in an acquittal position if a prosecution of the library were undertaken.

Senator LEAHY. Did you ever advise the board that it could not legally remove the book from the library's collection if it wanted to do so?

Mr. DWYER. No, s[illegible].

Senator LEAHY. When you spoke at the public meeting in 1985, had a number of other people spoken ahead of you?

Mr. DWYER. Yes. What happened was there were five board members and each board member made a statement of his or her decision, giving the reasons for it, and that went on for some time. This was a very distinguished board, by the way. One of the mem-

bers was a past president of the University of Washington, and every one else on it was and is a distinguished citizen. And they all had examined this book.

After the five members had spoken, the city attorney spoke. I had been asked to say a few words at the end. I had the feeling, that we often get, that nobody wanted me to make a speech. I spoke very briefly, and I do not have notes or a record of what I said, but I can tell you from memory the points I believe I covered.

I believe I said that the child pornography laws are constitutional and valuable and represent a great advance in the protection of children. I believe I said, although I am not positive of this, that it is doubtful that in court it could be proved that any of the photographs come within the definitions of the Federal or State statute. I believe I said that a court would find that the book had real, substantial value for educational purposes. That part was quite easy because that finding had already been made several times. And I said that in my opinion there was not a sufficient legal basis to require the library to remove the book.

Now, I am paraphrasing and I cannot give you the exact words, but I believe that was the substance of my statement. I did not set out a detailed legal analysis of the reasons for my opinion. To do that would have taken longer than I felt I had been invited to speak. Of course, I was prepared to answer questions from the audience if there were any about the bases for my opinion, but there were no questions.

Senator LEAHY. Had you previous to that time given all the reasons, however, to the board?

Mr. DWYER. Yes.

Senator LEAHY. All the reasons making up your final opinion?

Mr. DWYER. We had discussed with the board, in attorney-client meetings, all the factors pro and con, including the ones I described a moment ago.

Senator LEAHY. Thank you.

Senator Thurmond?

Senator THURMOND. Thank you.

Senator LEAHY. And I should just note for the record—Strom, just a second—that Senator Adams, Senator Brock Adams has also joined us at the table.

Senator ADAMS. Mr. Chairman, I am pleased to be here. I was not here just prior to this because I was presiding over the Senate. I am in full support, personally, professionally, and every other way of Mr. Dwyer, both by my presence and by my voice, to whatever degree they are needed.

Senator LEAHY. The Chair would note that there has been strong and continuous bipartisan support of the Senate delegation from the State of Washington throughout this, and that both Senators have spoken to me a great deal about this nomination, both had been present at the earlier hearing and again today, and I welcome your presence here today.

Senator Thurmond?

Senator THURMOND. Thank you.

Mr. Dwyer, I want to say first that you are to be congratulated by being appointed by the President. That weighs heavily with me. You have been endorsed by both of your esteemed Senators who

are friends are mine. That weighs heavily with me. And you were recommended by my friend Dan Evans, and that weighs heavily with me.

There are some concerns I have, though, and I want to see if we can clear some of them up. And I am speaking about this book that you wrote—was that in 1984?

Mr. DWYER. Yes, sir. Well, I should say, Senator Thurmond, I wrote most of it in 1966. If you read the "Afterword" at the end of the book, as I say there, this case was tried in 1963-1964. The events referred to took place mostly in the period about 1960 through 1962, and I started this book, as I say here, in 1966, while living in Spain for a year, and then put it aside for a long time. Actually, it stayed in the attic for 17 years while I was busy doing other things.

And then what happened is my wife read this very rough draft that I had done in Spain, and she persuaded me to finish it. And as I say here, I finished it from what I hope was a wiser and certainly was a longer perspective in 1983 on Bainbridge Island, Washington.

So that is how it was written. Most of it was actually written in 1966.

Senator LEAHY. Incidentally, please, if you could just note for the record——

Senator THURMOND. You have a right to refer to anybody you want to——

Senator LEAHY. I would just state for the record that you are referring to "The Goldmark Case: An American Libel Trial."

Senator THURMOND. Yes, that is right. This is "The Goldmark Case: An American Libel Trial."

Senator LEAHY. We have had another book referred to all day, and I don't want the record to indicate that Mr. Dwyer wrote the other book. That is the only——

Mr. DWYER. I, apparently, failed to make that clear. The book I wrote is called "The Goldmark Case."

Senator THURMOND. Well, he hasn't written but one, and that is "The Goldmark Case."

Senator LEAHY. Well, I know. But I wanted to make sure the record show which book of the two here today we are talking about. That is all.

Senator THURMOND. I am not concerned about any opinion you might express about me. You got a right to say what you please.

Mr. DWYER. Well, I appreciate that, Senator, but I did not mean to express an opinion about you in the book, and I don't think I did. I think I used a quote from you as part of the background, but I don't think I expressed an opinion.

Senator THURMOND. I am concerned a little about, on page 25, a line that reads, "Far right organizations gained support from prominent businessmen, entertainers and retired officers, among them General Albert Wedemeyer, Admiral Arthur W. Radford"—he was the chairman of the Joint Chiefs of Staff, of course—"General Charles A. Willoughby"—he was the head of Intelligence—"Ronald Reagan, and John Wayne."

I was amazed to see that you mentioned Ronald Reagan as may have given some support to far right organizations. What did you mean by that?

Mr. DWYER. Well, of course, this is all historical material and the time referred to is for the most part the very late 1950's and 1960, 1961, and 1962. And much of this background part of my book, which sets the stage for the defamation of Mr. Goldmark that followed and for the trial that followed that, much of the historical background of my book came from reading I have done, and I listed some of the sources.

This book is a book without footnotes. It is not a work of scholarship, it is a trial story. The sources, however, at least the main sources, are mentioned in the "Afterword" of the book.

It is a fact that during that period of time, 1961-1962, there was a surge in this country of great fear about Communism. Communism, of course, is something that we all have a strong aversion to in the United States, but one theme of this book is that if we let fear of Communism become so dominant in our thinking that we turn on each other and falsely accuse each other, we are not helping the real anti-Communist cause and we certainly are damaging our society.

And as to the passage you just read, "Far right organizations gained support from prominent businessmen, entertainers and retired officers," it is a fact that during this period of time, 1961-1962, some very prominent and very fine people in the United States did give support in one way or another to what were then called, not by me, this was common usage, were called "far right organizations," and that is what this refers to.

Senator THURMOND. Ronald Reagan is the man that appointed you Federal judge, and he has been in office now since 1981. I am amazed that you expected to be appointed judge, why you didn't revise this book—you said the material was collected years ago—and bring it up to date.

Mr. DWYER. Well, Senator——

Senator THURMOND. And delete things that should have been deleted according to your statement.

Mr. DWYER. Senator, in the first place, I was not thinking of being a judge in 1983 when I finished this book.

I was asked if I would accept appointment as a judge. I don't mean by our Senators. I was asked by members of our bench and bar if I would accept appointment as a judge. And I thought it over and agreed. I had been asked before, and this time I agreed that I was ready to serve and I would be glad to serve if the appointing authorities wanted to appoint me.

But, even if I had thought in 1966 when most of this was written—and that is when virtually all of this chapter was written—even if I had thought then, or in 1983, about the possibility of my some day becoming a judge, I wouldn't have trimmed my sails in this book on that account. After all, we live in America, and we have a right here to speak and write the truth as we see it. And I don't think a lawyer is doing his job right if he trims and tells less than the truth about what he is supposed to be talking about.

Senator THURMOND. Well, let me ask you this. What did Ronald Reagan do that helped far right organizations? I have always found Governor Reagan, he is conservative but I have found him reasonable and fair. I admire him very much. I think he has made an outstanding President and a wonderful President, and I just can't

imagine why you included him in here as giving support to far right organizations.

Mr. DWYER. Again, we are talking about 1961-1962.

Senator THURMOND. Well, I don't care when you are talking about. What did he do to lend support to far right organizations?

Mr. DWYER. And what he did during that period of time—he was a private citizen at the time—what he did at that period of time was to make speeches at conventions of some of these far right organizations and speeches of a type which tended to give approval and support to those organizations.

Senator THURMOND. Well, don't you think someone in the public eye frequently make speeches. I make speeches to a lot of organizations maybe I don't agree with. I am just invited to speak and I speak to them, but that doesn't mean I endorse what they say.

And you put down here, included his name as the far right getting support from these people.

Mr. DWYER. Yes, and that is a true statement. It is a true statement because the support was moral support and vocal support. And then I go on to quote Mr. Reagan, who at that time was a private citizen, as saying to one of these organizations in a speech——

Senator THURMOND. Did you support him for President?

Mr. DWYER. Did I?

Senator LEAHY. Well, wait just a moment. I think that whether one supported or did not support the President or whether he supported either of the two men beside him is really immaterial.

Senator THURMOND. Well, you don't have to answer whether you supported him or not. I just——

Mr. DWYER. I don't mind answering if it is consistent with the rules.

Senator LEAHY. No. It is entirely an option to you.

Senator THURMOND. It is up to you. You don't have to answer it if you don't want to.

Mr. DWYER. Well, I have no objection to it, and if you would like to know the answer, Senator, I would be happy to give it. Would you like to know?

Senator THURMOND. Yes, I would, out of curiosity.

Mr. DWYER. I supported Mr. Mondale in the 1984 election, and in 1980 I supported President Carter.

Senator THURMOND. You supported Mr. Mondale over President Reagan?

Mr. DWYER. Yes.

Senator LEAHY. We should note for the record that——

Senator THURMOND. Well, what about the last time Reagan ran?

Mr. DWYER. Well, that was the last time. And the first time, which was against President Carter, I voted for President Carter.

Senator THURMOND. You voted for President Carter?

Mr. DWYER. Yes, sir.

Senator THURMOND. So you haven't supported the President at all, then?

Mr. DWYER. Well, I wouldn't say that. I thought you were asking me about my votes.

Senator THURMOND. And you included him in some of—along with the Chairman of the Joint Chiefs of Staff, Admiral Radford,

and other great patriots and Americans, as contributing to right wing organizations?

Mr. DWYER. Senator, if you read this book, I think you will find that it is a very kind and very temperate book. I do not attack anybody. I just describe what happened. And it is a fact, which we would be remiss if we didn't face, that there have been periods in our history when anti-Communism has become inflamed, overaggressive, and unrealistic in its descriptions of what is going on in the country and the world.

To some extent, we went through such a period in the early 1960's, especially while John Kennedy was President. The reason I mentioned any of that in this book is that it is a prelude, it sets the stage for the libel of John Goldmark and the trial which followed.

It is historically accurate. I was very careful in what I wrote, and many people have told me that one of the most remarkable features of the book is its evenhandedness and its temperate view of everyone who appears even indirectly in its pages.

Now, it is not for me to say whether I succeeded in doing that, but I will tell you that was one thing I was trying to do, was to portray all viewpoints sympathetically.

Senator THURMOND. One statement here in your book that I didn't understand was, "The radical right had little faith in democracy or time for its processes." If President Reagan was considered in the Right, are you accusing him of having little faith in democracy or time for its processes, or these other people?

Mr. DWYER. No, I certainly did not. I think the two passages you are talking about are in two different places.

Senator THURMOND. Page 25.

Mr. DWYER. Yes. I did not say here that Mr. Reagan was a member of the radical right. What I said here is, "Far right organizations gain support from prominent businessmen, entertainers and retired officers," and then there is a list of names.

Senator THURMOND. He wasn't the far right, but the radical right; is that what you meant or not?

Mr. DWYER. No, I didn't characterize him at all, except as being a prominent entertainer, which he was at the time. And in regard to Mr. Reagan, the only thing I said was to list him among a list of prominent, famous, and I believe admirable people, who in that period of time gave some support to some of these organizations. That was a true statement.

And the purpose of putting in this historical background was to show that during this historic period of ours, this is now a quarter century ago, we went through a phase where a lot of very estimable people did give support to some of those organizations.

Senator THURMOND. I am just wondering if you changed your mind on any of the statements you made in the book?

Mr. DWYER. Not that I know of, but if you have one in mind I would be glad to speak to it.

Senator THURMOND. About Mr. Reagan or Admiral Radford or those people. I am wondering if you have changed your mind about Ronald Reagan, President Reagan?

Mr. DWYER. As to what he did in 1961–1962? I would be glad to change my mind except that what I wrote is true. If it were shown to be false, I would be glad to change my mind. But I have re-

searched it again between these two hearings to make sure if there was a factual grounding for what I said here and there is, and I can quote it for you if you want.

Senator THURMOND. I guess you did appreciate him appointing you a Federal judge, didn't you?

Mr. DWYER. I did, and I said at the first hearing—which you weren't able to attend because I believe you were visiting with the Pope that day in South Carolina—one of the first things I said was that I am deeply honored to be nominated by President Reagan and to have the support of both of our Senators from the State of Washington.

Senator THURMOND. Mr. Dwyer, in response to a portion of the committee questionnaire regarding organizations to which you belong you responded, I believe, in part, and I quote:

"I have contributed to various organizations of which I am not a member."

I wonder if you would tell the committee the names of these organizations and their objectives.

Mr. DWYER. I couldn't give you a complete list without referring to records, but I can remember some of them. The Orion Center for Street Children in Seattle. The Boys' and Girls' Clubs of Seattle. The YMCA. The Nature Conservancy. The Southeast Alaska Conservation Council. The American Civil Liberties Union and its Foundation.

I have contributed occasionally to the Democratic Party. I have contributed often to individual candidates of both parties. You are asking, though, I believe about organizations.

Senator THURMOND. By voting for Mr. Mondale, did you support his campaign? Did you contribute to it?

Senator LEAHY. Well, if I could just interject again, and it is entirely up to the witness to——

Senator THURMOND. Yes, I leave it to him to answer.

Senator LEAHY [continuing]. To answer, but let me just——

Senator THURMOND. You don't have to answer if you don't want to.

Senator LEAHY. Please, if I may. Since I have been Chairman or since I have been holding these hearings on judicial nominations this year, and we have a questionnaire that goes around, I have made sure that neither in the questionnaire nor any questions that we ask here have I asked any nominee who he or she has supported for President, Governor, Senator, Congressman, or dogcatcher. Nor have I ever asked any nominee whether he or she has contributed to the Republican Party, the Democratic Party or any other party, or any individual. Nor do I intend to.

Now, any person who wants to say whether he did is okay. The only question we have ever even asked at all has been if somebody has had a major role, an obvious role, and somebody had been——

Senator THURMOND. I won't press the question.

Senator LEAHY. But I just want it understood that I do not——

Senator THURMOND. I won't press you, if you don't want to answer.

Senator LEAHY. There are certain things like people's religious beliefs, going into those aspects of their political beliefs I have always considered off limits.

Mr. DWYER. I appreciate your consideration, Mr. Chairman, but I have no objection personally to answering Senator Thurmond's question.

The question was whether I supported the Mondale campaign and contributed to it, I believe. Was that the question?

Senator THURMOND. Yes, it is the question, if you would care to answer that.

Mr. DWYER. And the answer is yes, I did.

Senator THURMOND. If there are any other organizations, if you want to supply them for the record, it will be all right.

Mr. DWYER. I beg your pardon?

Senator THURMOND. If you made any contributions to any other organizations, you can answer for the record if you wish to.

[List follows:]

October 27, 1987

The Honorable Strom Thurmond
Senate Judiciary Committee
SD-224
Washington, D.C. 20510

Dear Senator Thurmond:

At the Committee hearing held on my nomination on October 22, 1987, you invited me, if I wished to do so, to add to the record a list of the organizations to which I have made financial contributions. I am glad to do that now.

The following list was compiled by my secretary from the records that we have, and is complete to the best of my knowledge and belief. Some of the contributions were made by my wife (Washington, as you probably know, is a community property state). The organizations to which we have contributed over the past five-plus years (from the beginning of 1982 to the present) are as follows:

St. Cecilia's Church
Seattle Police Officers Guild
Shrine Circus Fund
Lakeside School Annual Fund
Lawpac
University of Redlands
Washington Environmental Foundation
National Wildlife Federation
N.W. Fund for the Environment
Public Television
World Affairs Council
Seattle Art Museum
University of Washington Law School
Valley Museum
Winners Circle Boys & Girls Clubs
World Wildlife Fund
ABA Annual Fund
American Bar Foundation
American Judicature Society
Target Seattle
Cancer Fund
ACLU Foundation
ACT Theatre

Community Home Health Care
Cousteau Society
Empty Space Theatre
Children's Orthopedic Hospital
Food for All
M. Kushner Memorial Fund
Planned Parenthood Federation
Robert C. Finley Fellowship
Citizens for a Cleaner Washington
St. Theresa School
S.E. Alaska Conservation Council
Special Olympics
N.W. Women's Law Center
Brahms Society
Brass Ring Theatre
Cornish School of Art
Evergreen College Annual Fund
Foster Parents Plan
LANAC/Washington State
Montlake Community Club
Nature Conservancy
St. Joseph's Hospital
Neighborhood Outreach
SeaTac Firefighters
Seattle Institute for Charity
Catholic Community Services
Greenpeace
University of Washington (Katz Professorship)
Swedish Hospital
University of Puget Sound Law School
Friends of Youth
Whitman College
Seattle Audubon Society
NYU Law School Alumni Fund
Cross Dist. Professorship
Washington Burn Fund
YMCA of Greater Seattle
Floating Homes Association
University of Minnesota Law School
Allied Arts
Kildonan School Fund
Lutheran World Relief
Temple De Hirsch Sinai
N.W. Kidney Foundation
Variety Club Heart Fund
Ambulance Fund - Church Council
Center on Contemporary Art
United Way
Center for Wooden Boats

Amnesty International
Active Life
NYU Alumni Annual Fund
Municipal League
Supreme Court Historical Society
Puget Sound Law Foundation
Neighborhood Legal Clinics
Fred Hutchinson Cancer Research
ALS (Lou Gehrig's Disease Foundation)
West Coast Veterans Association
Ted L. Stein Memorial Fund
Little Red School House (T. Wolf Fund)
Common Ground
New Hope Ministries
Christian Education Fund
University of Washington President's Fund
Washington Commission for the Humanities
Virginia Mason Clinic
Boys Village
U of W Law School Development Fund
League of Women Voters
Downtown Human Services Council
United Negro College Fund
Municipal League Foundation
Washington Council for the Blind
Washington Fair Share
Connecticut College
William O. Douglas Institute
Intiman Theatre
Red Cross
The Charles and Annie Goldmark Family Foundation
Solomon Katz Endowed Professorship
Seattle Olympic 470 Campaign
Parents-in-Arms
Pike Place Market
P-I Readers Action Fund
Downtown Human Services Council
National Association for the Advancement of Colored People
Harborview Hospital
Friends of the Shelter
Lewis and Clark College
B'nai B'rith Foundation
Hospice of Seattle
Seattle Police Relief Association
Seattle-King County Bar Foundation
Common Cause
Love Run (Muscular Dystrophy)
Medic I
Central Seattle Community Federation

D. Holman Scholarship Fund
Seattle University
Crystal Mountain Athletic Club
Seattle Public Library Foundation
Seattle Times Fund for Needy
Seattle Youth at Risk Program
Vietnam Veterans of America
Dispute Resolution Center
Swedish Hospital Fund
U.S. Ski Association
AFTRA Legal Defense Fund
American Cancer Society
CAPRI
Whitman College
SCORE for Washington
Visiting Nurses Association
Seattle Mental Health Institute
Friends of Street Kids
Marilou Goodfellow Fund
Ninth Circuit Historical Society
Rural Development Institute
Robert Chinn Foundation
U of W Law School (Shefelman Fund)
Mediation Consortium of Washington State
Big Brothers of King County
N.W. Aids Foundation
Market Foundation
Diabetes Research and Education
Renton Jaycees
Woman Judges Fund for Justice

Since you asked about organizations, I have not included gifts to individuals or to political campaigns. The political contributions were listed earlier in my letter to the Justice Department dated August 14, 1986. The list does not include my share of contributions made by my law firm.

I trust that this information will be of assistance to you.

Sincerely,

William L. Dwyer

William L. Dwyer

WLD:kaf

Senator THURMOND. Now, Mr. Dwyer, at your September 11th, 1987 hearing, Senator Simpson questioned you regarding your membership in the ACLU.

I believe you responded in these words:

> I believe I became a member of the ACLU probably in the late 1950's. I was a member of the local board from about 1959 to 1961, and to the best of my knowledge and recollection I ceased being a member probably in the late 1960's or early 1970's.

Mr. Dwyer, I have a copy of the November-December, 1984 ACLU newsletter which contains a review of your book, "The Goldmark Case: An American Libel Trial," along of a photo of you and a caption which states in part, "He is a long-time member of the ACLU."

Mr. Dwyer, is this article incorrect in stating that you were a member of the ACLU in 1984?

[Article follows:]

Amendment Ballot Inside

CIVIL LIBERTIES
AMERICAN CIVIL LIBERTIES UNION
OF WASHINGTON

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Seattle, WA

ne 16, No. 6 Civil Liberties November/December 1984

CLU-W Founders and Mike Lowry Honored

U of Washington Founders and Con-
man Mike Lowry will be granted the
ation's 1984 William O. Douglas
il Libertarian awards at the annual
Rights dinner to be held Sunday,
ber 9 in Seattle, announced Board
ent, Peter Eglick.

1985 marks the 50th anniversary of
LU of Washington's founding. In rec-
n of that occasion, the ACLU of
gton Board of Directors will present
am O. Douglas Award to the ACLU
ington's founders. Judge Edward
the sole survivor, will accept the
on behalf of the founders. "The fif-
niversary of the ACLU in Washing-
fitting time to honor those persons
ggled to put together a civil liber-
anization in the state," said Eglick.
w Rome nor the ACLU of Washing-
built in a day. There were several
tarts in trying to establish an on-
stable ACLU presence in Wash-
he most clear cut founding day is
5, when officers and an executive
were appointed, according to
ational archives. There had been
ttempts to form an organization
decade which lasted for brief
s, but it was not again when the
ganization took place. Since all of
tee has relied on Albert Gunn's "Civil Liberties in Crisis: the Status of Civil Liberties in the Pacific Northwest, 1917-1940." Gunn used the ACLU's archives at Princeton University as his primary resource for the ACLU history. Of the people so far identified as founders, Judge Ed Henry is the only survivor. Others include Fred Shorter, Irving Clark, Mary Farquarson and Jack Cluck.

Congressman Mike Lowry will receive the 1984 Civil Libertarian Award. This award was established in 1977 to honor those people who have made outstanding contributions to the ACLU-W or civil liberties during the preceding year. Congressman Lowry is a strong proponent of civil liberties in Congress. According to the ACLU's Washington, D.C. office, Lowry scored a 100% civil liberties voting record in 1983 and an 83% in 1984. His political ads this year about "constitutional liberties" were particularly noted by the Awards Committee. Committee chair Mary Anne Vance wrote, "More than just voting right, he speaks out strongly for civil liberties through his constituent newsletters and in his political ads. Lowry's clear voice in favor of civil liberties and civil rights amidst the storm of anti-liberty rhetoric deserves special recognition by the ACLU of Wash-

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Doc. #2

Dec '84 ACLU
Pub. says Dwyer
was then an ACLU Mbr

Legal Briefs

Washington Employees in Service Trades (WEST) v. Four Seasons-Olympic

King County Superior Court Judge Bever denied class certification to both WEST and seven individual plaintiffs on the basis that "joinder of parties plaintiffs . . . is inappropriate where there is the context of a labor dispute." The superior court ruled out WEST, a coalition of labor unions, as a class representative because of its involvement in a labor dispute and ruled out the individual plaintiffs because they were associated with WEST. The court of appeals denied WEST's request for a discretionary review without opinion. The ACLU asked leave to participate as *amicus curiae* and in support of the plaintiff's motion for discretionary review before the state supreme court. The ACLU argues that the decision interferes with freedom of speech, freedom of association, and access to the courts. Cooperating attorney: Charles Henderson.

Maury v. Gibbs An *amicus curiae* brief was filed in Division II of the state court of appeals on behalf of plaintiffs who have challenged the use of emergency rulemaking procedures by DSHS to promulgate agency regulations to implement its Community Work Experience, otherwise known as "workfare." The ACLU argues that emergency rulemaking powers must be interpreted narrowly in order to preserve opportunity for public comment and that DSHS abused its emergency rulemaking authority. The State Administrative Procedures Act limits the use of emergency rulemaking powers. Such emergencies may exist (1) when immediate adoption is necessary for the preservation of the public health, safety and welfare, and (2) when observance of the notice and comment requirement is contrary to the public interest. The ACLU argues that these criteria were not met by DSHS. Cooperating attorney Marc Kittner.

Fury v. Seattle

The City of Seattle has moved for discre-

State v. Myrick

On September 13 the state supreme court held that aerial surveillance by the unaided eye of open fields at an altitude of 1,500 feet above ground level does not constitute a search for purposes of Washington Constitution Article 1, § 7: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." The court held that, unlike the Fourth Amendment, Article 1, § 7 precludes a "protected places" analysis and mandates protection of the person in his private affairs. The U.S. Supreme Court recently reaffirmed that open fields did not fall within Fourth Amendment protections. The ACLU argued in an amicus brief that a person's activities are protected under the state constitution if they cannot be seen without technological enhancement devices or cannot be observed from a normal vantage point by a person of ordinary curiosity. While the court upheld the aerial surveillance in Myrick, it noted that aerial surveillance "could be conducted in such an intrusive manner that it would become a search" necessitating a warrant under Article 1, § 7. Cooperating attorney: Jim Lobsenz.

Ground Zero v. Kitsap County Board of Commissioners

Division I of the court of appeals affirmed that trial court's holding that the county commissioners acted arbitrarily and capriciously in denying Ground Zero's permit applications, and that the Peace Pagoda project would have no substantial adverse effects. The court, however, remanded the case back to the commissioners for a new hearing and held that Ground Zero would have the burden of proof. ACLU cooperating attorney Michael Gendler has petitioned for review by the state supreme court.

Political Campaign Signs

The ACLU has filed two separate law-

New Book Provides Insights Into Pivotal Libel Trial

"The Goldmark Case: An American Libel Trial" by William L. Dwyer University of Washington Press $16.95

In 1962 John Goldmark, cattle rancher, Harvard Law School graduate, and distinguished three-term state legislator for a lightly populated area in north central Washington, was overwhelmingly defeated in his attempt for re-election. He and his wife, Sally, had been accused of being communists by a small group of right-wing extremists. The Goldmarks sued their accusers for libel and when their case came to trial in the winter of 1963–64 it had become a cause célèbre throughout the country.

Witnesses of national reputation crossed the country to testify, the eastern press covered the case, and issues of civil liberties, the communist challenge to the values of American society, and the radical right movement were fought out before a rural jury. The charge that the American Civil Liberties Union was a communist front, among other issues, was litigated for the first time. Today, two decades later, the Goldmark trial tells us much about democracy, civil liberties, and trial by jury.

William Dwyer was the Goldmarks' chief counsel. His gripping story of their nightmare and ultimate vindication is a classic of American trial court history. He provides a vivid picture of the political climate and its effect on everyone involved — plaintiffs, defendants, and counsel for both sides. In addition he gives us a fascinating description of the

William L. Dwyer, a Seattle trial attorney, is a partner and co-founder of the firm Cusp, Dwyer, Gutierrez and Grader. He is a long-time member of the ACLU, past president of the Seattle-King County Bar Association and a member of the Board of Governors of the Washington State Bar Association.

plan the strategy of a case: from jury selection, the questioning and cross-examination of witnesses, to final arguments.

The lessons of the Goldmark case lead to the core of our contemporary social fabric. They restore our faith in the American jury system. Just as that system has begun to come under concentrated attack the evidence of this case shows us that a jury is able to comprehend and pass judgment on the most complex cases. Jurors bring to the courtroom an ever-renewed freshness and a wealth of experience that no one person, not even the greatest judge, can match. The second lesson we know but have to be continually retaught. We have allowed wave after wave of anti-communist hysteria to injure innocent Americans and to debase our political life. John Goldmark's accusers went beyond the limits of political invective. And the decision of the nine men and three women in an old county courthouse in Okanogan, Washington, reminds us today that the strength of our democratic values allows us to live amid differing

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Mr. DWYER. Yes.

Senator THURMOND. That is incorrect?

Mr. DWYER. It is. And the testimony I gave is correct.

Senator THURMOND. Thank you. Now, Mr. Dwyer, in response to question number 18 of the committee questionnaire regarding significant litigated matters, you did not list the case of *Rabe* v. *Washington*. This, I believe, is a case involving obscenity, and the only case you have successfully argued before the Supreme Court.

Mr. DWYER. Well, it is the only case I have argued before the Supreme Court, sir. I wouldn't want to leave the implication that I lost some. It is the only case I argued before the Supreme Court.

Senator THURMOND. Would you tell the committee about this case and why you did not include it as a significant litigated matter in your questionnaire?

Mr. DWYER. Well, in the first place, I understood the question to be asking about cases I had actually tried, and I did not try the *Rabe* case.

In the second place, if I were to list my 10 most important matters that I have handled on trial or appeal or what have you, I still would not list the *Rabe* case. Because to my mind——

Senator THURMOND. Well, the questionnaire asked for cases litigated.

Senator LEAHY. Could you let him just finish, please?

Senator THURMOND. Oh, I thought he was through. Excuse me.

Mr. DWYER. To my mind, it was an interesting little case, but not a major undertaking. And the question of why I didn't list it was that in the first place I thought it was asking for questions I had tried, and in the second place the *Rabe* case would not make the top 10 in any event.

I did not try that case. What happened was I was asked by the Motion Picture Association of America to help represent Mr. Rabe, who had just been convicted and his conviction affirmed in the Washington State court system, and I agreed to do that.

And Mr. Rabe's counsel, from Pasco, or Richland, Washington, and Mr. Rabe himself, of course, agreed and I then handled it just at the U.S. Supreme Court level where we were successful by a vote of 9 to nothing on what I thought then and still think was a fairly obvious proposition.

Senator ADAMS. Mr. Chairman, if I might respond on behalf of Mr. Dwyer on the ACLU matter, I would like to ask unanimous consent that a letter from the ACLU which states, "Today I checked with the National Office and was informed their records show that you have not paid dues or done anything else to suggest membership since February 1974." This is just to——

Senator THURMOND. No objection.

Senator LEAHY. Without objection, it will be in the record.

Senator ADAMS. Thank you, Mr. Chairman.

[The ACLU letter follows:]

ACLU

American Civil Liberties Union of Washington and
American Civil Liberties Union of Washington Foundation
1720 Smith Tower
Seattle, Washington 98104
206/624-2180
1-800/348-8810

October 20, 1987

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William L. Dwyer, Esquire
Hyatt Regency Hotel
400 New Jersey Avenue NW
Room 1163
Washington, D.C. 20001

Dear Mr. Dwyer,

In response to your request, I am writing to provide information about your membership status with the American Civil Liberties Union.

According to our records you are not a member of the ACLU and have not been for many years. I understand that your best estimate of when you ceased to be a member is the late 1960's or early 1970's. That is consistent with our institutional memory at the Seattle office. Today I checked with the national office and was informed that their records show that you have not paid dues or done anything else to suggest membership since February 1974.

You are not among our pool of cooperating attorneys and have not served as one for about the last twenty years.

I trust this information will be of assistance.

Sincerely,

Kathleen Taylor

Kathleen Taylor
Executive Director

KT:mk

Mr. DWYER. I must say, Senators, that I believe my word should be enough on a matter like that. But I heard earlier this week that some question was being raised, so I phoned the ACLU in Seattle and asked the executive director to write a letter confirming what they could verify about my membership dates.

Senator THURMOND. Well, your recollection appear to be correct.

Senator LEAHY. I might point out, Mr. Dwyer——

Mr. DWYER. My testimony was correct.

Senator LEAHY [continuing]. That the Chairman accepted your testimony knowing it was under oath.

Senator THURMOND. I know it is in the—in this case *Rabe* v.——

Mr. DWYER. This also says I——

Senator THURMOND. How is that?

Mr. DWYER. This also says, Senator Thurmond, that I have not been a cooperating attorney of the ACLU for about the past 20 years.

Senator THURMOND. In this case *Rabe* v. *Washington* they had you listed William L. Dwyer argued the case and filed briefs for petitioner. Don't you think that would be considered litigating a case?

Mr. DWYER. Well, as I say, I took the question to mean actually trying the case. If you are implying that I left that out out of some desire not to have the Senate know it, you couldn't be more mistaken, Senator Thurmond. Among my 10 most prominent litigated cases, cases I tried, I listed *Fine Arts Guild* v. *City of Seattle,* which was a case in which we represented a very high quality, foreign film motion picture house in Seattle, in a lawsuit that went to the Washington State Supreme Court. I tried it and I argued it on appeal. An illegal, unconstitutional motion picture censorship scheme was held to be invalid by the Washington State Supreme Court. That is listed among the 10 most important cases I have tried.

Senator THURMOND. I just wondered why this case wasn't listed as one of those that you litigated because you appeared and argued the case in the Supreme Court, I believe.

Mr. DWYER. Well, the reason is it wasn't one of my 10 most important and I didn't try the case. There was one of the organizations that reviews nominees, I think it is the American Bar Association, that asks you to supply a sampling of half a dozen of what you think are your best briefs, and I provided to them my brief in the *Rabe* case. Because although I didn't think it was an earth-shaking case by any means, I did put in special care to write what I hoped was a top-notch brief for the U.S. Supreme Court. So that was included in the packet that was sent forward.

Senator THURMOND. Mr. Dwyer, there has been concerns raised regarding a legal opinion that you gave on behalf of the Seattle Public Library board in 1985. I believe the question put to you by the board had to do with the legality of the library maintaining a copy of the book "Show Me." Now you commented on this a while ago and I have a question.

In response to the board, you have been quoted as stating, "The courts would clearly hold that this book is serious in its purpose and that it has real legitimate, substantial value as an educational resource. I don't believe there is a sufficient legal basis under

either the Federal law or State statute to justify moving the book from the collection of the library."

Now, in 1982, 3 years prior to your opinion, the Supreme Court ruled in *New York* v. *Ferber* that a State statute which regulated the pornographic depictions of children was constitutional.

As a result of this decision, the publisher of "Show Me" ceased publication of the book. I have been informed by several law enforcement agencies that the book is used as a tool by pedophiles to entice young children into performing sexual acts and is regularly found during the course of investigations of those involved in child pornography and exploitation. In fact, I have also been advised that the book is like a "bible" for pedophiles and at one time was advertised for purchase in such magazines as Hustler and Chic.

Now, Mr. Dwyer, would you tell the committee what, in your opinion is the substantial value of this book?

Mr. DWYER. What I said in that vein regarding substantial value was that I believed a court would probably find that this book has substantial educational or scientific value. However, I must tell you, Senator, that was not a matter of laying out the reasons for my opinion. I was not asked to do that and I did not attempt to do it at that public meeting.

It is a true statement that a court would find, in all probability, that the book has that kind of value. But that, in itself, does not make it exempt from the child pornography laws and I never said that it would.

Now, let me just quote to you, if I may. In 1976, the Massachusetts Superior Court for Middlesex County reviewed this book on a criminal charge of obscenity and found that the book was legal under that law. The judge said—and I quote—

> [E]ven a cursory examination of the book allows for the determination that it has serious literary and scientific value.

That had been decided already at the time I gave my opinion.

The Massachusetts judge had also ruled,

> [I]t appears to me that the issue is really not one of obscenity, indeed, but one concerned with the efficacy and propriety of sex education attempted in this manner. That question is an educational and moral one, engaging personal preferences and parent-teacher's judgments.

Also, we knew as of 1985 that an Oklahoma State court had ruled the book legal and its distribution legal under the obscenity laws. The judge there said that this is not an obscene book within the definition set out by the U.S. Supreme Court and he went on to say,

> On the contrary, while the book does depict ultimate sexual acts in a very few of the many photographs contained within it, the book taken as a whole does not appeal to a prurient interest in sex, does not portray sexual conduct in a patently offensive way, and does have serious literary artistic and scientific value.

Still a third case took place in New Hampshire. The judge heard evidence from witnesses who described the book's scientific and educational value and ruled that it was legal to distribute it under the State of New Hampshire's obscenity laws.

Finally, there was a prosecution in Canada and a very learned and very long opinion in which the judge said, "I think that many,

many Canadian parents could and would use this book effectively with their children."

So in all four cases, the book had already been pronounced to have serious educational and scientific or literary value.

Senator THURMOND. Have you——

Senator LEAHY. If the Senator could just yield for a moment—I'm certainly not going to cut off anybody's chance for questions, but if you could give me some idea of how much time you think you might need because we still have yet to hear from Senator Grassley. Because we can only go a bit longer, I'm debating whether we should then just recess over to the 26th, on Monday at 10:00 o'clock, and get a chance to go on to this. It's just that we would have to notify those who are on the 26th that they may have to be put off until the next hearing.

Senator THURMOND. Well, if you want to recess, it would be all right. We have a good many more questions, and I understand Senator Grassley has a good many, too.

Senator LEAHY. We may have to just substitute this for the hearings on the 26th and then reset those for another time. I don't want to cut you off in any way.

Senator THURMOND. You can have them both, can't you?

Senator LEAHY. I doubt it. Could you just give me an approximate idea? That's all.

Mr. DWYER. Mr. Chairman, if there's any way to do it today, I would consider it a great accommodation. Of course, I don't want to inconvenience any Senator, but this is our second——

Senator THURMOND. We have a good many questions, Mr. Chairman. This is a very important matter and I certainly want to get all sides of it.

Senator LEAHY. I would be the last person to cut off any Senator.

Senator THURMOND. I want to probe this issue further. I've got to be convinced that this man is not inclined to pornography. I will fight him to the last if I think he is. I've got to be convinced that what he did was a lack of understanding or either just purely a casual opinion where he didn't consider all the information. So it is very important.

In other words, I'm all against pornography, all the way.

Senator LEAHY. I don't know too many people in favor of it, Senator, but I would point out that the Chair is not in any way trying to cut off or limit your time. I am not setting a limit at all on it. I just want to get some approximation so we can plan for scheduling, that's all.

If the Senator wants to take 10 days, that's fine with me. I am not going to cut him off at all. I just want to make sure we have some idea of how long it will be.

Senator THURMOND. Do you want to go ahead now, or do you want to stop? What do you want to do?

Senator LEAHY. Let's go ahead for a while.

Senator THURMOND. Mr. Dwyer, my concerns in this matter are obvious. The sexual exploitation of young children in this country is a serious problem and not one that should be taken lightly by any individual attorney, board, or judge. I do not mean to imply that you do not share these feelings.

I wonder, however, as a U.S. district court judge, if you are confirmed, will you follow precedent as set forth by the Supreme Court and appellate courts in such areas as child pornography and child exploitation, and will you avoid the temptation to interpret the law based on your own personal beliefs?

Mr. DWYER. Senator, I would not even feel such a temptation. You don't know me. I'm a trial lawyer. The whole heart of my existence has to do with the law, and there is no way I would do anything other than faithfully follow the law.

Senator THURMOND. Do you want me to yield to you for a while? Let me do that.

Senator GRASSLEY. Mr. Chairman.

Senator LEAHY. The Senator from Iowa.

Senator GRASSLEY. I appreciate that very much, Mr. Chairman, and, more importantly, that the ranking member, my friend, Senator Thurmond, would let me intervene at this point.

Mr. Dwyer, I have many questions with respect to your nomination. Some of them go to the heart of the decision that I have to make about whether you should get a lifetime appointment to the Federal court, but I am not here to conduct an inquisition of you.

What I know of your background interests me. My questions are really to try to find out more about you, and I hope you take them with the intended spirit.

Mr. DWYER. I will, and I will be glad to answer any and all questions you have, Senator.

Senator GRASSLEY. You were the counsel in that major libel trial back in the 1960s, the Goldmark case, right?

Mr. DWYER. Yes, sir.

Senator GRASSLEY. Okay. You represented the plaintiffs who sued over their being publicly accused of being Communists; is that correct?

Mr. DWYER. Yes.

Senator GRASSLEY. Did your clients win their case at trial?

Mr. DWYER. Yes. They won, and then there was a judgment n.o.v. afterward because of the New York Times decision.

Senator GRASSLEY. Did the jury award damages?

Mr. DWYER. Yes, sir.

Senator GRASSLEY. How much did they recover?

Mr. DWYER. Well, $40,000, which at that time and place was a lot of money. Inflation has set in since then.

Senator GRASSLEY. In rough figures, what were the legal fees in that case?

Mr. DWYER. Zero.

Senator GRASSLEY. Was the case appealed?

Mr. DWYER. No.

Senator GRASSLEY. It seems to me that the importance of this case is in standing up to and being vindicated against an angry mob, a vocal minority bent on distortion and lies that harm someone's reputation. It's a terrible thing to be wrongly accused and I want to commend you for taking a lead in that case. I, too, have recently witnessed vicious lies spread against a public official, the worst I have ever seen since the 1950's.

Along that line, let me ask you, as one with some knowledge of libel law, how you would analyze some of the written materials

concerning the nomination of Judge Bork. What I want to refer to here is some of the material that has been mailed out by various groups. One was by NEA, I believe, and the other one was a Ralph Nader solicitation.

So my first question is, have you—Well, first of all, I want you to look at that material.

Mr. DWYER. I would be glad to.

Senator GRASSLEY. In a more general vein, before you analyze that, were you familiar with any of that material before you saw this right here?

Mr. DWYER. No, I have not seen——

Senator GRASSLEY. You didn't see newspaper advertisements or——

Mr. DWYER. I saw newspaper ads and one television ad, as I remember. I have not seen these particular things.

Senator GRASSLEY. Okay. Have you looked at those long enough so that——

Mr. DWYER. I think I get the drift.

Senator GRASSLEY. Have you—Referring to your leadership in libel matters, have you seen any material that you thought was actionable in court, this material here?

Mr. DWYER. Concerning Judge Bork?

Senator GRASSLEY. Yes.

Mr. DWYER. No, I have not. None of the material I have seen concerning Judge Bork—and I haven't taken the time to read verbatim what you have just handed me—but the materials I have seen would all lead to unsuccessful litigation, I believe, because of the New York Times decision, which I know you're familiar with, Senator.

Senator LEAHY. Just to interject—again, of course, the witness is free to answer any question he wants—I would note again that it has been my experience, for very justifiable reasons, that at no time has any nominee for judicial office, in their nomination hearing, been asked about the pending nomination of another person for another judicial office, especially for a judicial office of a higher court. I mention that only because that is a precedent that we may want to ask ourselves about if we want to start establishing having one judicial nominee being asked in any way to testify about another judicial nominee, or even about the process of it. We could have a very difficult time, especially when the nominee of an inferior court is asked to speak about the nominee of a superior one.

Senator GRASSLEY. I'm not going to ask him anything about Judge Bork, per se. But I do think here—you know, you have suggested that maybe this has never been done before. But I have seen a lot of new precedent made in the last month, two months, on judicial nominees. I have raised the point of whether or not this process is really the direction we want this country to go and whether or not the mere existence of an independent judiciary might not be at stake with the direction some of these hearings are taking.

But I'm not setting a precedent, I don't believe, in what I'm going to be asking here.

If I could get back to where I was, why is calling someone a Communist, like in the *Goldmark* case, a libel, but it might not be libel

to grossly distort somebody's public record, like those materials distort somebody's public record?

Mr. DWYER. The basic rule of libel is that you have to prove first that the statement was defamatory, and second, that it was false. To call somebody a Communist in this country is one of the worst libels because of the views we have on that subject. Even that kind of extreme statement today would be subject to the New York Times rule if the target was a public official or public figure. You would then have to prove actual malice—that is, knowledge that the statement was false or a reckless disregard of its falsity—to have a chance at a libel recovery.

This kind of material reminds me of Senator Simpson's statement when I was here in September, when he said, if you make yourself available for public office in this country, you become raw meat—that was his phrase. Under the New York Times rule, I think to a great extent that is true.

Senator GRASSLEY. Would you read the highlighted material?

Mr. DWYER. It's highlighted in blue here?

Senator GRASSLEY. Yes.

Mr. DWYER. "In close cases, Judge Bork's vote can be predicted with almost 100 percent certainty simply by identifying the parties to the lawsuit." That is the first highlighted item. There are several more.

Senator GRASSLEY. Would you also read the other highlighted material as well?

Mr. DWYER. "In truth, Robert Bork is an autocratic radical disguised as a conservative. He rejects the framers' intent that the court should aggressively guard the rights of individuals against a tyrannical majority.

"Bork has always worshipped the reactionary idol's defending right-wing dogma against progressive change."

I trust the record is clear that I'm reading something. This isn't Dwyer talking at this point.

"The freedom of white racists to refuse to serve blacks at hotels and restaurants" is treated here as a criticism imputed to Judge Bork of the civil rights law.

Do you want me to read the rest?

Senator GRASSLEY. Yes, please.

Mr. DWYER. "Actual victims of the Bork judicial career include workers in hazardous jobs, consumers victimized by dangerous products, women seeking equal opportunity, citizens seeking access to the courts or government information, and homeless persons deprived of due process.

"In 1973, Bork once again embraced a squalid defense of the shameless. Bork almost always sides with his political buddies, business, the Reagan executive branch, right-wing moralists, the CIA, and against the underdog. Like a wolf slipping into sheep's clothing, Bork uses 'judicial restraint' as a subterfuge to give surface respectability to rulings that are, in fact, fiercely partisan."

I think that concludes it. Those are all quotes that I just read.

Senator GRASSLEY. Do you believe the charges, as explained by that cartoon and that Nader material, against Judge Bork are true?

Mr. DWYER. No.

Senator GRASSLEY. These materials that I have shown you in large part are a plea for funds. Did you receive any material like this in the mail?

Mr. DWYER. No, I didn't. Or if we did receive it, it was thrown out before I looked at the mail.

Senator GRASSLEY. Did you contribute any money to the campaign against Judge Bork?

Mr. DWYER. No.

Senator GRASSLEY. As you know, the ACLU broke with longstanding tradition on Supreme Court appointments with an opposition to Judge Bork. Were you contacted by anyone in the ACLU with respect to the Bork nomination?

Mr. DWYER. No, sir.

Senator GRASSLEY. Well, did you receive anything in the mail from them?

Mr. DWYER. I don't know. I don't remember anything. But a lot gets thrown out at our house.

Senator GRASSLEY. Did you make any contributions at all in the effort to defeat Judge Bork?

Mr. DWYER. No, certainly not.

Senator GRASSLEY. What do you think of the practice of soliciting money to defeat a Supreme Court nominee, or any other nominee to the judicial branch?

Mr. DWYER. Well, I think it's one more unfortunate step toward the overuse of money in our political system, and to spread it into judicial nomination campaigns I believe is——

Senator GRASSLEY. Does it trouble you that that's being done?

Mr. DWYER. Yes. And it troubles me, also, if a kind of campaign is waged in connection with a nomination. The constitutional structure is that the President nominates and the Senate gives or withholds its advice and consent. Historically, that's been the usual method of doing it.

Senator GRASSLEY. Let me just change directions a little bit here. I did have a whole series of questions to ask you about the *Rabe* case, but Senator Thurmond did that. I just have one question.

I think as I understood you, you said the *Rabe* case was obvious. If that's the case, why didn't the Supreme Court find in favor of the theater owner?

Mr. DWYER. Why didn't they? They did.

Senator GRASSLEY. No, the Supreme Court in Washington.

Mr. DWYER. Oh, Washington.

Senator GRASSLEY. Yeah.

Mr. DWYER. Well, I wasn't in the case in the State court system, but my guess is—and I haven't read the State court briefs for probably 15 years; they were written by the original counsel from eastern Washington.

As I recall it, the same due process argument had not really been presented to the Washington State Supreme Court. Had it been, I think in all likelihood the same result would have followed that eventually followed from the U.S. Supreme Court.

Senator GRASSLEY. Mr. Dwyer, how are we to be assured that, as a Federal district court judge, you will be bound by the precedents established by the higher Federal appeals court, including the U.S. Supreme Court?

Mr. DWYER. Well, Senator, I wouldn't be here if I weren't prepared to be bound. You see, I have spent, counting Army time, I have spent 33 years trying cases. The most important factor in trying cases is to be able to try them to a judge who applies the precedents faithfully and does not try to inject his own views.

I revere that system and I revere that kind of judge. For anyone to suggest otherwise provides about as strong a test of my judicial temperament as I can imagine.

Senator GRASSLEY. I want to go at it a little different way, just to be more explicit. You do maintain that a Federal district court judge is bound by precedent and cannot make up his or her own version of constitutional law?

Mr. DWYER. Yes, sir.

Senator GRASSLEY. And you do agree that the Senate should expect that Federal district court judges, if confirmed, should adhere to this principle?

Mr. DWYER. Certainly.

Senator GRASSLEY. In regard to the book that's been so much discussed here, "Show Me," are you familiar with *State* v. *Marshall*, that case, where the Washington court upheld a child porn conviction where the defendant possessed the book?

Mr. DWYER. Well, I realize that description of the case has come from what's been given to you, Senator, but that is not what happened.

I had never heard of that case until yesterday. It is not a reported case. There was no appellate decision in that case, so I'm told.

Here's what happened. I heard of the case yesterday when I learned that one or more of the opponents today planned to mention it. It had never been mentioned before. This campaign by these anti-pornography groups has been going on for over a year. They circulated petitions, thousands of petitions, in the summer and fall of 1986, and they did the same thing again this year. All the same arguments have been made over and over again at every stage, from the Justice Department to the White House and so on, and now to the Senate.

To the best of my knowledge, this *Marshall* case was never mentioned until yesterday—at least I never heard of it until yesterday. I have read every Washington case that touches on this statute, and this one didn't ring a bell at all.

So yesterday I called my office and asked one of our associates to go anywhere necessary to get hold of the court file in that *Marshall* case and find out what happened.

One of our young associates went over to Port Orchard and looked through the court file and called me back and explained it this way:

There is no appellate opinion. There is no opinion at any level that analyzes the book "Show Me" in the *Marshall* case, according to the information she gave me.

What happened was this. In our local district court—which is comparable to what they call a justice of the peace court in many jurisdictions—in one of our local district courts a defendant, Mr. Marshall, had been charged with one count of unlawful possession of child pornographic materials. Sixty-two items were listed by the prosecutor for placement into evidence, and presumably did come

into evidence. There is a finding by the district court that the defendant was guilty—without opinion, at least according to what I was told.

As it was reported to me, there is no way to tell from the file how many of the items formed the basis of the conviction. It is possible, in a one-count situation like that, to convict on one, two, or any number of the items.

There was then an appeal by the defendant to the superior court, which is our general trial court. Under our procedures, the superior court judge listens to a tape of the district court trial and either affirms or reverses. There was an affirmance entered in this one—again, as I understand it, without opinion.

The defendant then tried to get appellate review in the court of appeals and in the State supreme court in the State of Washington. They both had the discretion to deny review and they both did deny review.

So, as I understand it, Mr. Marshall was convicted in district court in July, 1985, two months after the "Show Me" decision was made by the Seattle Public Library Board. He was claimed to have 62 items in his possession. He was convicted on one count, and from what I've heard, there is no legal description or analysis of this particular book and the case cannot constitute any precedent in regard to "Show Me."

All of that is based on what I was told by long distance telephone yesterday.

Senator GRASSLEY. What I want to do at this point, Mr. Chairman, is to insert this in the record and then let that point go.

This is from the Bremerton Sun, June 6, 1986. I will read the first paragraph and then another paragraph in the middle of the article, and then I will insert it in the record.

A Bremerton man's conviction in district court last year for possessing child pornography, including photos of an eight year old child engaging in sexual activity with him, has been upheld by a superior court judge.

Then the next paragraph, down in the middle of the article,

Among the items introduced into evidence was a controversial sex education book Show Me, which contains graphic illustrations of children involved in sexual activity.

[The following was received for the record:]

JUDGE UPHOLDS CONVICTION OF MAN WHO POSSESSED CHILD PORNOGRAPHY

(By JoAnne Marez)

A Bremerton man's conviction in district ourt last year for possessing child pornography, including photos of an 8-year-old child engaging in sexual activity with him, has been upheld by a superior court judge.

Hugh Marshall, 52, will have to serve his county jail term, unless he decides to appeal Grays Harbor Superior Court Judge Robert Shorett's decision of this week.

Marshall's attorney, Michael Klemetsrud of Port Orchard, said Marshall has 30 days in which to seek review by the state Court of Appeals in Tacoma. Meanwhile, the jail sentence has been stayed.

"I haven't talked to my client but we will discuss the issue of appeal," Klemetsrud said yesterday.

Shorett's written decision was about a paragraph long and did not detail his reasons for upholding the conviction by Kitsap County District Court Judge James Riehl. Shorett served as a visiting judge and heard arguments by Klemetsrud and Deputy Prosecutor Lucretia Fishburn on the constitutionality of the law.

Riehl sentenced Marshall to a year in the county jail and fined him $5,000 for the offense, a gross misdemeanor, then suspended 185 days of the sentence and $4,300 of the fine. Marshall served 19 days in jail before posting a $750 appeal bond.

The Marshall case came to light in a rather unusual manner, according to Prosecutor Dan Clem. Marshall allegedly had taken photographs of an Oregon woman in the late 1970s, when she was a child and lived in Kitsap County. She finally told her parents, friends of Marshall's, and they came to Bremerton and demanded—and were given—the photos of their daughter. They subsequently took the material to Bremerton police.

An investigation into the alleged sexual abuse was launched but, said Clem, the statute of limitations on felony charges had run out.

Prosecutors eventually filed the misdemeanor charges against Marshall, based on a vast of array of pornographic materials found in his possession. The majority of the items, including photographs taken by Marshall, involved children. The 62 exhibits admitted at the hearings included dozens of magazines featuring children in sexually explicit poses, along with photos of Marshall and children he knew.

The case drew the attention of then-Sen. Barbara Granlund, who was concerned about the fact that a sex abuse case could not be pursued because the five-year statute of limitations had run out on the case. Clem said Sen. Granlund sponsored legislation that eventually resulted in the statute of limitations being extended to seven years.

"It was too late for this case," Clem said, "but we were pleased that we have a longer time period for other cases."

When the misdemeanor charges were filed against Marshall, Klemetsrud sought a dismissal, arguing to the court that law violated First Amendment guarantees and amounted to "thought control."

Marshall admitted the materials were his but testified they were for his personal use alone and had never been out of his house. He had acquired the material in the late 1970s, he said, which is when the photos of the young children and Marshall were taken.

Among the items introduced into evidence was the controverial sex education book, "Show Me," which contains graphic illustrations of children involved in sexual activity.

"When we start telling people what they can read and what they can look at and what they can think, then there are no rights" under the constitution, Klemetsrud argued.

He said there was no evidence Marshall shared his pictures with anyone else or did anything but possess them. They were only for "Mrs. Marshall's interests, whatever those interest may be."

But Miss Fishburn argued that the case involved ". . . much more than just saying First Amendment."

She told the court that the protection of children is a compelling state interest and that a New York case involving child pornography cited "study after study after study" showing participating in child pornography is harmful to children. Child pornography should remain an exception to the classic free speech protection, she argued.

After briefings and arguments, Riehl ruled in Miss Fishburn's favor, noting that "safeguarding the physical and psychological well-being of a minor is compelling."

"Just as advertising and selling of child pornography creates an economic motive for production of child pornography, so does the possession. In fact, possession can be said to be the ultimate goal in the production and distribution; for without individuals willing to purchase and possess, there would be no motive to produce, sell, distribute or advertise."

The case has dragged on for nearly two years with continuances granted at the request of both sides.

Senator GRASSLEY. Mr. Dwyer, are you familiar with the 1982 U.S. Supreme Court decision in *New York* v. *Ferber* and the Court's opinion in that case by Justice White?

Mr. DWYER. Yes, sir.

Senator GRASSLEY. In summary, doesn't Justice White say that States are entitled to greater leeway in the regulation of pornographic depictions of children, that a State's interest in safeguarding the physical and psychological well-being of a minor is compelling, that the Court will not second guess the legislative judgment

of a State's public policy that demands the protection of children from exploitation through sexual performances, and that virtually all of the States and the Federal Government have passed legislation prescribing the production of or otherwise combatting child pornography specifically?

Mr. DWYER. Yes, sir. I remember that statement and I agree with it fully.

Senator GRASSLEY. Okay. Continuing to summarize, doesn't Justice White find that the distribution of photographs and films depicting sexual activity by juveniles is related to the sexual abuse of children, that these materials are a permanent record of the child's participation that is exacerbated by their distribution, that it is irrelevant to an abused child whether or not the material in which the child has been depicted—and I quote—"taken as a whole, appeals to the prurient interests of the average person", and whether the same materials—and I again quote—"contain serious literary, artistic, political or scientific value", that this standard established by the court in the *Miller* v. *California* obscenity case bears no relationship to whether a child has been physically harmed by being exploited, and that a sexually explicit depiction need not be patently offensive in order to have required the sexual exploitation of a child for its production?

Mr. DWYER. Yes, sir.

Senator GRASSLEY. Also, doesn't Justice White find that the Miller standard is inadequate to deal with the problem of child pornography, that the use of children as subjects of pornographic material is harmful to the physiological, emotional and mental health of children, and that such a finding by the State and Federal legislatures passes constitutional muster under the first amendment?

Mr. DWYER. Yes.

Senator GRASSLEY. Allow me to summarize Justice White's findings in *Ferber*. First, the value of permitting live performances and photographic reproductions of children engaged in lewd sexual conduct is exceedingly modest, if not de minimis.

Second, it is unlikely that such material would often constitute an important or necessary part of the literary performance or scientific or educational work. When a class of material such as that covered by the New York criminal statute in *Ferber* bears so heavily and pervasively on the welfare of children engaged in its production, then the balance is clearly struck in favor of considering these materials outside the protection of the first amendment.

Third, in this case, the *Ferber* case, the action that is proscribed by the New York statute has been adequately defined and is limited to those works that visually depict sexual conduct by children below a certain age. In other words, the New York criminal statute was found not to be vague, and so it did not violate the first amendment.

Mr. Dwyer, my question: How can you reconcile the advice you gave to the Seattle Public Library Board in 1985 where you talked about the book's value as an educational resource with Justice White's opinion for the Supreme Court in *Ferber* in 1982?

Mr. DWYER. My opinion was entirely consistent with the *Ferber* case. In the *Ferber* case, the Supreme Court held off to another day the question of what effect it would have if the material had seri-

ous literary, scientific, or educational value. They didn't have to decide that because that kind of material was not in Ferber's trial.

They went on to affirm the conviction despite Ferber's argument. Ferber admitted that his material was obscene and trash and had no value. His argument was that the statute, by its words, could be applied to suppress legally, constitutionally-protected material. Therefore, said Ferber, the statute is invalid, and therefore you can't even apply it to me, although my material isn't of that type.

Most of the majority opinion is devoted to refuting that overbreadth argument, as it is called. The Court ended up saying, "[W]e seriously doubt . . . that these arguably impermissible applications of the statute amount to more than a tiny fraction of the materials within the statute's reach." That resembles the statement I made a little while ago that 99 percent—plus of what comes before the courts in this vein doesn't present any problem.

The majority went on to say that "whatever over-breadth may exist should be cured through case-by-case analysis of the fact situations. * * *" So they ended up affirming *Ferber's* conviction, upholding the constitutionality of the statute, but putting off to another time the question of what happens if the material has substantial value of that nature.

Justice O'Connor then concurred in a separate opinion saying, in her view, it's not going to make any difference whether the material has such value. Justices Brennan and Marshall filed a concurring opinion in which they argued the opposite, saying that in their view the application of such a statute to depictions of children that in themselves do have serious literary, artistic, scientific, or medical value would violate the first amendment. And there it stands.

My opinion is that educational or scientific value alone will not suffice to take a book or a film out of the coverage of the child pornography statute. The advice I gave to the public library was based on the—I believe there were eight considerations that I mentioned near the beginning of my testimony.

Since this furor has come up, I've checked out my advice with others, including prosecutors, and my opinion, as far as I can tell, is just about universally shared by well-qualified lawyers.

This is not to endorse the book or approve the book. We're talking about a book where the pictures were taken in a foreign country several years before the law was passed, in accordance with the laws and morality of that country, and published here as a sex education book, and in a situation where the second circuit has found, in that civil case I mentioned, that because of the time and place and circumstances in which the pictures were taken, and because they doubted that the pictures could be brought within the descriptions of the statute in any event, the statute probably would not apply to this book. That was held in the *St. Martin's Press* case.

When we add to that the fact that this book was kept in many of the best libraries in the United States, both in small towns and big cities, I believe there is a consensus that it is legal for a library to keep this book.

And, Senator Grassley, it seems to me that if there is a substantial dispute about that, why not get it resolved in court?

Senator GRASSLEY. Can a State constitutionally proscribe child porn that, in your eyes, has educational value?

Mr. DWYER. Yes.

Senator GRASSLEY. By the way, I'd like to ask you what is the educational value of that book, "Show Me," to you.

Mr. DWYER. Well, to me, personally?

Senator GRASSLEY. Yes.

Mr. DWYER. I suppose that——

Senator GRASSLEY. I suppose I want to know what those pictures teach you.

Mr. DWYER. Well, they didn't teach me a thing. Several years ago I gave each of our three kids a birds and bees speech as he or she reached the appropriate age, and with each one, the child started to laugh before I got 10 or 15 words out and said, don't worry about it; it is all taken care of. So I can't claim to be an expert in sex education, but many of those who are experts find a great deal of value in this book. I myself would not use it, and it seems to me that anything that needs to be taught in sex education can be taught without the use of photographs of live models, whatever their age may be.

Senator GRASSLEY. I think I would like to have your views on whether or not a State could constitutionally proscribe child porn. I would like to have you explain for me how you would suggest that they could go about that. In other words, what should the statute say?

Mr. DWYER. The statute can exist as it is now and prosecute those materials. I think I gave the illustration a while back——

Senator LEAHY. I think this question has been asked and answered a couple of times. I mean, feel free to ask it again, but I have asked virtually the same question to Mr. Dwyer and he answered it once already.

Mr. DWYER. I don't mind doing it again. I think Senator Grassley may have been out of the room.

Senator GRASSLEY. Yes, please.

Mr. DWYER. I can do it very quickly.

Senator LEAHY. I am sorry. I didn't realize you were——

Senator GRASSLEY. Please do it.

Mr. DWYER. In the legislative history of the federal statute, the Justice Department representative said that the law is not considered applicable by the Department to legitimate sex education material. There is a similar disclaimer in the Washington State statute.

It would be possible from these two items relating to the statutes to make an argument that they simply don't apply to any works that have serious value. That kind of result seems to be suggested by the Brennan concurring opinion in *Ferber*.

My own opinion is that that view will not prevail. I think that the main consideration, as this law unfolds and is applied by the courts, will be whether the children were exploited, and particularly in the United States since the statutes were passed.

So to sum up, I do not think that any publisher of a book can escape prosecution where he uses prohibited-type photographs simply by putting them in a text that has value, speaking of the child pornography laws.

Senator GRASSLEY. Mr. Chairman, I have here several recent news articles all from the State of Washington and all since Mr.

Dwyer gave his advice to the school board there, and I would like to highlight these. First, from Saturday, August 10th, 1985, the Seattle Times, an article entitled "Accused Child Molester Used Show Me Book, Teen Tells Court."

Just one little paragraph:

The girl said she thought the man got her to look at the book to show us it was right, what we were doing.

Another article from the Seattle Times, September 18th, 1985, headline "Child Porn Sex Abuse Investigated in County." One paragraph in the middle of the article says,

When police went to the man's apartment acting on information supplied by the woman, they seized photo equipment, a copy of the book Show Me which was the object of a controversy at the Seattle Public Library earlier this year, four books of nude photographs, and numerous negatives and photographic prints.

And I also have a letter dated August 28th, 1987, from the National Center for Missing and Exploited Children, and I would like that these documents be made a part of the record, but for highlighting my point it says,

The book Show Me was one item which was frequently found in the searches of child molesters' property, generally was used in the seduction of the children, and was seen as highly erotic by these pedophiles. Any behavior on the part of criminals that appears consistently and universally must be recognized as having high predictive and preventative value for law enforcement and legislation.

[Aforementioned material follows:]

PROSECUTION URGED FOR THOSE WHO PERMIT SEXUAL ABUSE OF CHILDREN

(By Lee Moriwaki)

Parents, day-care operators and even school authorities ought to be criminally prosecuted if they knowingly place children in situations that lead to sexual abuse, a key Washington state legislator says.

The call for tough action came yesterday from Sen. Phil Talmadge, chairman of the Senate Judiciary Committee, after a Harborview sexual-assault-center official recounted how a King County mother saw her daughter being sexually assaulted by her husband, but did nothing about it.

The molestations took place from the time the child was 6 until she was 18. The father only now is being prosecuted because the daughter is testifying against him, said Lucy Berliner, coordinator for child research and community advocacy at Harborview Medical Center.

The mother ought to be prosecuted for endangerment at the least, said Berliner. But Washington's criminal statutes presently do not allor for that.

A National Conference of State Legislatures' panel on child sexual abuse was presented a litany of horror stories yesterday about the meager resources available for prosecuting offenders and treating the victims.

Berliner said federal dollars to support basic research into why people molest children are virtually nonexistent. Treatment of offenders is in a rudimentary stage at best, added Timothy Smith, codirector of Northwest Treatment Associates in Seattle. And the education of children about sex abuse is left primarily up to the family, both said.

"Well, guess who molests children," Berliner said.

Talmadge said he favored a proposal first suggested by King County senior Deputy Prosecutor Rebecca Roe that parents or people given the responsibility of parents be liable for criminal offenses, such as endangerment, if they knowingly place or let children remain in a physically or sexually abusive environment.

Talmadge said state laws that say spouses can't be forced to testify against each other could be amended so there is an exception in child-abuse cases. Spouses already can be made to testify in cases involving the commitment of a mate for mental illness, Talmadge noted.

There were some 30,000 cases of child abuse and neglect reported in Washington state last year, of which almost one-fourth involved incidents of sexual abuse, Talmadge said.

Smith, the Northwest Treatment Associates co-director, said pedophiles move from locale to locale and across state lines, and may molest 300 to 400 children in a lifetime.

No foolproof treatment method has been developed yet, he said noting that treatment around the world ranges from castration to prayer. The most advanced programs may include counseling, electro-shock or some form of sex therapy, he said.

As far as the victims, the full trauma may not materialize for years. "We can't say your child is fine. We tell parents that you have to worry about this the rest of your child's life," Berliner said.

Accused Child Molester Used "Show Me" Book, Teen Tells Court

Terrace, B.C. (AP)—A man charged with 29 counts of child sex abuse used the book, "Show Me," showing children in a wide variety of sexual activities, to persuade his victims they should go along with him, a 14-year-old girl testified in court.

The girl said she thought the man got her to look at the book "to show us it was right, what we were doing."

She was testifying Wednesday at the Provincial Court trial of Robert Willoughby, 35. He is charged with 24 counts of gross indecency, four counts of illegal sexual intercourse, and one count of illegal assault involving six children over a 10-year period.

The girl told Judge Paul Lawrence that Willoughby first showed her the book when she was 9 or 10 years old.

The book recently made news in Seattle when a group protested its presence in the Seattle Public Library. After several meetings, library officials decided to keep the book.

The girl said Willoughby showed her the book several times, and encouraged her to show it to other children with whom he was involved.

Child Porn, Sex Abuse Investigated in County

(By Peyton Whitely)

Police are investigating three incidents of sexual exploitation of children in Seattle and King County, according to court documents.

They include one inquiry into the activities of a well-known Seattle citizen. Another involves a day-care home and a third concerns the use of a 9-year-old girl in a pornographic videotape.

In the first of the cases, dozens, of photographs of young girls posing in the nude were seized Aug. 29 at an address on Burke Avenue North after police executed a search warrant.

The warrant was issued after a woman told police she had met a man at the Fremont Street Fair who told her he had recently become interested in photography and wanted to photograph her two minor daughters.

The woman said she agreed to let the man photograph her daughters on Aug. 28 and they went to the man's apartment. Where he showed her a book called "Youthful Beauty." The man then gave the girls "pretty bridesmaid-type dresses," according to the warrant and tried to pose the girls in provocative positions. The man then showed the woman about 30 photos of a nude 6-year-old in sexually explicity positions.

When police went to the man's apartment, acting on information supplied by the woman they seized photo equipment, a copy of the book "Show Me," which was the object of a controversy at the Seattle Public Library earlier this year, four books of nude photographs and numerous negatives and photographic prints.

The suspect in the case, who has not been charged, has been active in Seattle's community affairs for years.

In a second investigation, a 56 year-old Kirkland man was arrested Aug. 20 in connection with a 3-year pattern of sexual encounter with a young girl while she was attending a day-care home.

According to an affidavit filed with a search warrant, the incidents took place between July 6, 1979 and July 6, 1982 at a home along Northeast 80th Street, Kirkland's Rose Hill area.

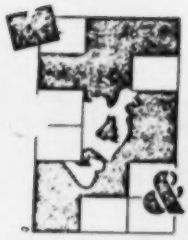
The victim, now 11 and living in California, attended day care at the home then, said Dean S. Lum, deputy prosecuting attorney. The home was licensed under the name, of a woman living at the home, Lum said, but the man under investigation "would often be around during the day."

Beginning when the victim was 5, the man molested her on several occasions, Lum said. The girl recently disclosed the incidents to her mother, who reported them to investigators.

The suspect has been released on his personal recognizance. The state Department of Social and Health Service was unable to say whether the home is still licensed to provide day care.

In a third incident, King County police served a search warrant Friday at a Kirkland residence along Northeast 128th Street after, a 9-year-old girl reported she was used in pornographic videotapes by her uncle.

The girl said she had spent the night with her 38-year-old uncle on Aug. 23. The girl said the man made videotapes of her in the bathtub and involved her in sexual activities. Police found 10 video-cassette tapes, 23 books, two sets of sexual aids and marijuana paraphernalia. Police said they are continuing their investigation.



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AUGUST 28, 1987

Ms. Andrea K. Vangor, Ph.D.
Executive Director
Washington Together Against Pornography
1011 Boren Avenue, #148
Seattle, WA 98104

Dear Dr. Vangor:

Per your letter of August 19th in reference to the book Show Me!, the following information may be of some assistance. Prior to my coming to the National Center as its Deputy Director, I was the Program Manager for the Louisville-Jefferson County KY Exploited & Missing Child Unit. This police/-social work Team was the first in the nation created to provide detection, investigation, and protective services on behalf of youth as well as apprehension and prosecutory services against adults criminally exploiting children through prostitution, pornography, or child-sex-rings in the Louisville SMSA.

From July, 1980, through February, 1984, the police/social work Team of the E.M.C.U. investigated about 1,400 cases of children suspected of being victims of sexual exploitation. 54% (756) of the children were found to be victims and an additional 31% (431) of the children were considered probable victims although lacking sufficient proof for court proceedings.

During this time period, the E.M.C.U. prosecuted hundreds of adults for various crimes involving the sexual exploitation of children. Over 40 major cases involved the successful prosecution of adults involved with over 12 children each. In one particular case, investigators thought there were up to 320 child victims. At the time of arrest of and/or service of search warrants, ALL of these adult predators were found with various forms of adult pornography and in most cases child nudes and/or child pornography. Over 4 years, the E.M.C.U. Team learned to expect to always find adult pornography as such was used by the adult offenders for their own sexual arousal, for self validation of their own sexual deviation(s), for extortion of child victims or other adults, and for the deliberate and planned lowering of inhibitions of child victims.

The book Show Me! was one item which was frequently found in the searches of child molesters' property, generally was used in the seduction of the children, and was seen as "highly erotic" by those pedophiles. Any behavior on the part of criminals that appears consistently and universally must be recognized as having high predictive and preventative value for law enforcement and legislation.

Clearly, one should expect to find Show Me! in the arsenal of tools used by preferential child molesters to erode "family, school, and church values" about age-appropriate human sexuality in preying on children. Law enforcement nationally now carefully and deliberately searches for Show Me! type publications in child molestation investigations.

Please let me know if I can provide any further clarification or be of any further assistance.

Cordially,

John B. Rabun, Jr., ACSW
Deputy Director, Technical Assistance

c.c.: Ken Lanning
Rob Showers

Senator GRASSLEY. I have one question—well, I don't know whether it is one question, but this is on Senator Hatch's behalf that I am asking this question, Mr. Dwyer. It has come to my attention that during a press interview in Seattle, you were to have said that despite your appointment and subsequent confirmation to the Federal bench, you were going to continue your public service in assuring that the Seattle Mariners baseball team would remain in Seattle.

Apparently, this involves a suit or threatened suit regarding the franchise and its possible shift to another city. Is this true?

Mr. DWYER. It is true that I have continued, while I am still a practicing lawyer, helping them, but if the implication relates to anything after I would go to the bench, of course not. I never said any such thing and wouldn't dream of such a thing.

Senator GRASSLEY. Okay, and then Senator Hatch goes on to say, since I do not have access to the clippings on this particular interview, what did you have in mind if you indeed did make such a statement?

Mr. DWYER. Well, the only statement I could have made is that I am still helping the county on the Mariners matter, which has been a pro bono job all this year, while I am still in practice, even though—I suppose they mean even though I have been nominated for the bench.

Senator GRASSLEY. What is your participation in this activity, and do you indeed plan to sue and actively involve yourself in any activities such as those that I have described after you are confirmed?

Mr. DWYER. Well, no, of course not. I find it hard to understand how such a question could even be asked.

Senator GRASSLEY. Well, Senator Hatch is asking it and he——

Senator LEAHY. And I think the witness has answered it. It is obvious that no member of the Federal judiciary, once they have been sworn in, are going to be practicing law. But I would assume—and if I might just interject a moment, and I have not interfered with the Senator's half hour or so of asking questions, but just to interject for one question, during the time that your nomination has been pending, you have not drawn any Federal salary as a judge or anything else? Any income you have is only what you make in your private practice, is that correct, yes or no?

Mr. DWYER. Yes.

Senator LEAHY. Thank you.

Senator GRASSLEY. I don't think, Mr. Chairman, I have to pursue these questions anymore for Senator Hatch. I think they are pretty well taken care of.

Senator LEAHY. I am not trying to cut the Senator off.

Senator GRASSLEY. No.

Senator LEAHY. Again, if we could get some general idea of time, because I know——

Senator GRASSLEY. I am done.

Senator LEAHY. Okay, because these people are all working on about a 3-hour time change. They have been here for a long time. I know Senator Thurmond has a dinner and I have a meeting that started—an extraordinarily important meeting that started at six

and ends just about now that I have missed, and another one right behind it.

My intention is to recess now and come back. Your dinner will be over by eleven, you said, tonight?

Senator THURMOND. Well, I told you a while ago I think I will take 20 minutes and I will stop whether I am through or not, if that is agreeable to you.

Senator LEAHY. Well, I don't want the Senator to think that he has been cut off at any time. I mean, if the Senator wants 5 hours, it is all right by me.

Senator THURMOND. Do you want to stay 20 minutes or come back at 10:00 tonight? Which would you rather do?

Senator LEAHY. Well, it may be my call.

Mr. DWYER. Finish now or come back at 10:00?

Senator THURMOND. It is your call. I am just feeling him out.

Mr. DWYER. Well, I personally would favor going forward now, if that is——

Senator LEAHY. Be careful of your answer; it may involve my vote. [Laughter.]

Senator THURMOND. Do you want to go 20 minutes and then——

Senator LEAHY. Well, I don't——

Senator THURMOND. I will stop whether I am through or not.

Senator LEAHY. Well, no. Just so we understand, I do not want to cut off the Senator from Iowa, the Senator from South Carolina, or any other Senator, and if we can complete the hearing in 20 minutes, I will cancel a meeting that has required people to travel to Washington, D.C., so that they can go off and get a seven o'clock flight out of here and have them fly back in this weekend or next week.

I am happy to do that if that is going to be the end of the hearing. If we are not going to be able to complete at the end of 20 minutes and if the Senator thinks he may want more time, then we will recess until later this evening and then go as long as it takes. So what I am saying is I don't want to cut off your time.

Senator THURMOND. I just told you in 20 minutes I will stop; I will finish.

Senator LEAHY. And the Senator will be satisfied that that is enough for the hearing, is that correct?

Senator THURMOND. That is the third time I have told you that.

Senator LEAHY. Okay, I just want to make sure we understand. I thought we finished it last time. That is why I just wanted to make sure that this does not keep coming up, because I——

Senator THURMOND. Well, you didn't think that.

Senator LEAHY. I know the administration wants to get on with other judgeships.

Senator THURMOND. Well, we are wasting time.

Senator LEAHY. But I know they are anxious to get this one out of the way first before they go on with any other judgeships.

Go ahead.

Senator GRASSLEY. Mr. Dwyer, thank you.

Mr. DWYER. Thank you, Senator.

Senator LEAHY. I just want to make sure everybody understands the point, subtle though it was.

Mr. DWYER. I realize we are in a time crunch here. Could I add a couple of more words to Senator Grassley about his last remark?

You mentioned this work being in the collection of pedophiles. Anyone who misuses this work or any other work in that way deserves the full weight of the law to fall upon him.

I am no expert on pedophilia, but from what I have read and heard, their collections often include the book "Lolita," which, of course, is a legally published book. Their collections often include erotic art, even classical erotic art, which, of course, is legal to circulate. Even sometimes the Sears Roebuck catalog, certain parts of it, are favored by pedophiles. So I am told.

Any use of this work or any other work in that connection can be and should be heavily prosecuted. We were dealing in Seattle, though, with this book in a public library on a reference-only basis, restricted basis.

The conclusion that the library had the right, if they chose to, to continue keeping the book, I believe, must be shared all across the United States. We do not lack in this country for zealous, strong, conservative law-and-order prosecuting attorneys, but there hasn't been one prosecution of a library anywhere in the country for holding this book, and the reason, I am very confident, is that it is recognized widely that a library is within its rights to keep it if it chooses to do so.

Senator THURMOND. Are you through?

Senator LEAHY. The Senator from South Carolina is recognized for as long as he would like.

Senator THURMOND. Thank you.

Mr. Dwyer, at your first hearing before this committee, you testified that, quote, "I am strongly in favor of the vigorous enforcement of the child pornography laws." Would you please tell the committee what recommendations you have to ensure the vigorous enforcement of pornography laws?

Mr. DWYER. Well, what I mean by that is it deserves treatment as a major crime. It is not a mere nuisance. In my view, it is a major crime.

Senator THURMOND. I can't hear you. Would you speak in the machine?

Mr. DWYER. What I meant by that is that in my view, it is a major crime. It is not a mere nuisance and it should be prosecuted as a major crime.

Senator THURMOND. Now, Mr. Dwyer, in the April 1980 edition of the Seattle-King County Bar Association magazine, the president's message concerning Law Day, you were quoted as saying,

> No country, I believe, enjoys a legal system which translates a written constitution into true liberty as ours, to which guarantees free trials with such consistency.

Then, Mr. Dwyer, you make the following statement:

These are some of the things we have to be thankful for: Lawmaking by the courts. There is nothing new about this and nothing truly conservative about people who decry it. The centuries-old tradition of the common law is that law is changed and new law is made by judges. From the early years of our Republic, the courts have held and exercised the power to protect citizens' rights by holding unconstitutional an act of the legislature or the executive, often expanding the meaning of the Constitution in the process. They should continue to do so. Few would favor the alternative, which would be for the courts to sink to the level of mere enforcers for the other branches of government, and thereby contribute in the long run to the loss of our system of orderly and peaceful change.

[Article follows:]

by William L. Dwyer
SKCBA President

Law Day, May 1, is a time for us to remember the great gift we have received from our forebears in the American legal system, and to renew our determination to serve it. During three long stays abroad (one required by the U.S. Army and the other two acquiesced in with good humor by my law firm) I've watched court trials in England, France, Germany, Spain, Colombia, ("watch" is the wrong word in Colombia since cases are decided on the papers), Australia, Singapor Malaysia, India, and Canada. These countries and many others have some capable judges and eloquent lawyers. But no country, I believe, enjoys a legal system which translates a written constitution into true liberty as well as ours, or which guarantees fair trials with such consistency.

These are some of the things we have to be thankful for:

-- Constitutional liberty. The freedoms of speech, religion, and assembly, due process of law, **habeas corpus** and the other guarantees of our 18th century Bill of Rights are the best embodiment in law of the concept of each man's dignity and inviolability against the state. Although written into the Universal Declaration of Human Rights following World War II, they remain unrealized in most of the world.

-- An independent judiciary. The division of power among the executive, legislative, and judicial branches has prevented the excessive concentration of power in any of them. To maintain a judiciary which looks only to the constitution and the laws for direction, and which can act against the wishes of the other branches, requires strong judges and a strong tradition. We are lucky to have both.

--Fair trials. The presentation of live evidence, the right to cross-examine and to call witnesses, the right to counsel, and the presumption of innocence are all vital to fairness in trials. Many places don't have them. We do.

--Trial by jury. This great institution, now almost unique in the world, places decision-making directly in the hands of the citizens and keeps the judges in a refreshing and stabilizing contact with their constituents.

--Law-making by courts. There is nothing new about this, and nothing truly conservative about people who decry it. The centuries-old tradition of the common law is that law is changed, and new law is made, by judges. From the early years of our republic the courts have held and exercised the power to protect citizen's right by holding unconstitutional an act of the legislature or the executive, often expanding the meaning of the constitution in the process. They should continue to do so. Few would favor the alternative, which would be for the courts to sink to the level of mere "enforcers" for the other branches of government and thereby contribute, in the long run, to the loss of our system of orderly and peaceful change.

-- A strong bar. In no other country does the legal profession play such a central part in the national life as it does in the United States. And it is no coincidence that the American legal system is at once the strongest in protecting the individual and the most creative in fashioning rights and remedies under new conditions. The willingness of lawyers to work without pay, to defend unpopular causes, and to represent the poor and the outcast stands behind many of the great legal achievements of our history.

To say all of this is by no means to imply that we have nothing to learn from the legal systems of other countries. We have much to learn from them -- we could take many lessons in the field of penology, for example -- and from all of them we know that the best parts of any system can only be preserved and strengthened through the diligent work of each generation in its turn.

Foreign trial-watching, like spending a night in jail, should be done sooner or later by everybody in our profession. But it isn't necessary to do either to understand what we have and be thankful for it.

Farris, Fletcher, and Wright to Hear Moot Court Teams

The University of Washington will hold a moot court argument on April 25, 1980, before Ninth Circuit Judges Jerome Farris, Betty B. Fletcher, and Eugene A. Wright to determine the school's champion moot court team. The argument involves the highly controversial issue of whether the Seventh Amendment grants the right to jury trial in complex civil litigation.

The best team from Professor Robert Aronson's Appellate Advocacy class will be competing against two members of the University of Washington's 1979 National Moot Court team. The public is cordially invited to attend what promises to be a stimulating argument on a timely topic before a distinguished panel of judges. The argument will be held in the early evening of April 25. The precise time of the argument has not yet been finalized, but information is obtainable by calling the law school at 543-4550 between 8:30 and 5:00.

Senator THURMOND. I am just wondering if you made that statement and what you meant by it and whether you believe, as I understand the Constitution, that the Congress makes the law, the executive branch enforces the law, and the courts interpret the law.

Mr. DWYER. I agree with the last part of your statement. That is the role of the courts. What I was talking about in that article was basically two things. We are a common law country. We don't have a civil code like France or Germany. We are a common law country like England, and throughout our national history a great part of our laws actually have been made by judges.

Of course, I am talking primarily about civil law in the field of torts, contracts, and so forth. That still exists as a valuable part of the American judicial system, I believe, in all States. I'm not entirely sure about Louisiana, which has a different historical background, but certainly in at least 49 States, it is true that we still have important common law decisions being made, and that is a form of lawmaking by courts.

The second thing I had in mind was the U.S. Supreme Court and the highest court of each State. Those courts make law in the sense that they lay down in rulings what the Constitution means. Sometimes they expand the previously understood meaning in the process.

A good example is *Brown* v. *Board of Education,* 1954, overruling *Plessy* v. *Ferguson,* 1896, and holding separation of the races in public schools to be illegal. In that sense, appellate courts have always made law in the United States. Trial judges, in my opinion, do not and should not make law.

Senator THURMOND. Now, I want to ask you this question. About this book "Show Me," that has disturbed me considerably. Would you care to make any further statement along the lines of the questions I have asked you about that?

In other words, this book, your own witnesses said—there is no question about it—is indecent. It exposes the sex of little children. It shows intercourse there and, to me, it is disgraceful. It is the kind of a book that I don't think you would want in your home for your children or your wife. I certainly wouldn't want it for mine and I don't think the public would either.

I just wondered, is it your opinion that these witnesses expressed your opinion on that who testified this afternoon in your behalf?

Mr. DWYER. Well, my opinion, my personal opinion is that the book is offensive and I would not want it in my house. Beyond that, the library was not interested in my personal opinion, but only in getting correct legal advice.

Senator Thurmond, the newsstands are full of things that——

Senator THURMOND. What?

Mr. DWYER. The newsstands are full of things that you and I would find repellent and disgusting and would not have in our homes. They are nevertheless sold legally. I haven't made the law that way and neither have you, but we live in a system of laws and a lawyer's first duty is to advise his clients faithfully on the law as it is.

Under the law as it is, I believe that the advice was correct that the library was not required by law to remove the book from the

collection. Whether they actually removed it, of course, for policy reasons would be their decision and not their lawyer's decision.

Senator THURMOND. If you should be confirmed by the Senate, would you do everything you can to discourage pornography and protect the public along that line?

Mr. DWYER. Everything that would be possible to do in the role of a U.S. district judge, yes, I certainly would.

Senator THURMOND. Now, there are two things I want to mention. One is judicial temperament. I have seen some district judges embarrass jurors, embarrass attorneys, embarrass people attending court.

A Federal judge has all the power he needs. I have never seen a need for that to happen. I think judges ought to be courteous. The more power a man has, the more humble he ought to be. How do you feel about that?

Mr. DWYER. I agree a hundred percent.

Senator THURMOND. And another thing is some judges have taken over school districts, hospitals, prisons, and other things. I have always felt that those are institutions that belong to the State. They ought to be run by the State. Unless there is something very extreme or very unusual that would demand it, they should be left for the States to run and not taken over by Federal judges.

Mr. DWYER. Well, if you are asking me whether I agree with that point of view, it seems to me that the separation of powers is best served if courts do their best to avoid those kind of long-run jurisdictional, supervisory activities.

There have been a number of cases around the country where courts have felt compelled to engage in those activities, sometimes school desegregation, sometimes prison conditions.

In our part of the country, the most prominent one has been a fishing rights dispute.

Senator THURMOND. A what?

Mr. DWYER. A fishing rights dispute where the late and greatly admired Judge Boldt found it necessary to become a kind of judicial overseer of the fishing treaty implementation with the Indians in order, as he saw it, to make sure that the injunction that had been issued was being faithfully performed.

As you know, Senator, that has been somewhat of a trend in the second half of the 20th century in our law. Judges are doing more of that kind of semi-administrative, long-term jurisdiction business than used to be the case.

My opinion is that that kind of undertaking should be avoided whenever it is possible to do it.

Senator THURMOND. Mr. Chairman, I have no more questions.

Senator LEAHY. Well, I have a number, but I will waive them. [Laughter.]

You have been asked this question 25 times, twice by me and in various ways by everybody else. Can you assure the committee that if you are confirmed, you will follow, uphold and enforce the valid Federal and State child pornography laws?

Mr. DWYER. Yes, I do, Mr. Chairman, but I must say it has been a strange experience after 30 years of law practice in which I have done commercial litigation, antitrust, breach of contracts, torts, in-

surance defense, criminal law, to have this hearing taken up 95 percent by——

Senator LEAHY. Mr. Dwyer, you have anticipated my next statement, and that is with reference to the question earlier asked about why you didn't include a particular case. The question you were asked is, describe the ten most significant litigated matters.

And your answer was, "While it is hard to choose the ten most significant, I would list the following as ten of the

most important cases I have tried," and then went down and gave a compendium of cases that would do justice to a whole law firm, not just to one person.

Mr. DWYER. Well, I have been around a long time, Senator.

Senator LEAHY. Well, there are a lot of lawyers who have been around a lot longer who, if they had to pick, would not have difficulty picking that and could not put together a listing that was half that impressive, and certainly would not have any difficulty in leaving out cases because there is a lawyer's lifetime career just in those ten cases.

It shows a breadth of knowledge and experience and expertise very rarely seen in this committee in nominees of any President, Republican or Democrat, and I think that it is unfortunate that there has been so much time consumed on this one matter of a lawyer's legal advice to a library, legal advice that you very honestly and candidly said that you would give again as a lawyer, and that I think just about any lawyer would.

And I would hope, and I state in concluding only this, that those who are following this record would read the whole report, would read your response to the committee's questionnaire. Anybody who has practiced law, as I have and a number of others have, cannot help but be impressed with the breadth of your experience. The depth and the complexity is there, and this is a law school education in those ten cases, and I commend you for it.

And if there are no other witnesses and no other questions——

Senator EVANS. Mr. Chairman, just one——

Senator LEAHY. Don't tempt it.

Senator EVANS. I am not tempting it. [Laughter.]

I just want to express personally, and I know it is on behalf of my colleague and Mr. Dwyer himself, our gratitude for your willingness and the ranking member's willingness, both of you, to spend an extraordinary amount of time on this particular hearing.

I know that in the case of both of you it meant putting aside other very important engagements, and I am grateful for it. Thank you.

Senator LEAHY. With that—I appreciate that—the——

Senator THURMOND. The only thing I have got to say——

Senator LEAHY. We are going to come back at eleven.

Senator THURMOND. What you just said is what you should have followed in the Bork case.

Senator LEAHY. We will stand in recess on this matter. The Dwyer nomination will be sent over to the full committee and I will ask the Chairman to put it on the agenda as soon as possible and, I would hope, for a quick and successful vote.

Mr. DWYER. Thank you.

Senator LEAHY. We stand in recess.

Senator ADAMS. Thank you.

[Whereupon, at 6:45 p.m., the committee was adjourned.]

WRITTEN QUESTIONS FOR WILLIAM DWYER
FROM SENATOR GORDON HUMPHREY

1. AS I UNDERSTAND IT, YOU WERE RETAINED IN 1985 BY THE SEATTLE PUBLIC LIBRARY BOARD TO ADVISE IT IN CONNECTION WITH THE CONTROVERSY OVER THE BOOK "SHOW ME" AS PART OF THE COLLECTION OF THE SEATTLE PUBLIC LIBRARY. IN YOUR TESTIMONY, YOU STATED THAT THE FULL EXTENT OF YOUR RETENTION WAS TO ANSWER A "SINGLE QUESTION" FOR THE LIBRARY BOARD. YOU THEN TESTIFIED THAT THAT SINGLE QUESTION WAS "WOULD THE LIBRARY BE COMMITTING A CRIME TO KEEP THE BOOK IN THE COLLECTION?" BUT IN A MEMORANDUM OF THE SEATTLE PUBLIC LIBRARY ON THIS AFFAIR, DATED MAY 3, 1985, IT IS STATED THAT, "OUR LEGAL COUNSEL" WHICH I TAKE TO BE YOU -- "HAS FOUND THERE NOT TO BE [redacted] SUFFICIENT LEGAL BASIS FOR THE REMOVAL OF "SHOW ME!" FROM THE LIBRARYS COLLECTION." THAT FINDING IS CITED BY THE LIBRARY AS THE BASIS FOR ITS DECISION TO RETAIN "SHOW ME!" AS PART OF THE COLLECTION.

FINDING "NO SUFFICIENT LEGAL BASIS" FOR THE REMOVAL OF THE BOOK IS CLEARLY DISTINCT FROM THE NARROWER QUESTION OF WHETHER RETENTION WOULD BE A CRIMINAL VIOLATION. JUST BECAUSE RETAINING THE BOOK MIGHT NOT BE CRIMINAL OR ILLEGAL DOES NOT MEAN THE LIBRARY COULDN'T LEGALLY GET RID OF IT.

THEREFORE, HOW DO YOU EXPLAIN THE SEEMING DISCREPANCY BETWEEN THE LIBRARY MEMO'S CHARACTERIZATION OF WHAT YOU ADVISED THEM AND YOUR CHARACTERIZATION OF THE "SINGLE QUESTION" YOU WERE ASKED TO ANSWER?

2. AGAIN, IN A NEWSPAPER REPORT ON THE PUBLIC HEARING OVER THE "SHOW ME!" DISPUTE IN MAY OF 1985, YOU ARE QUOTED AS STATING:

"THE COURTS WOULD CLEARLY HOLD THAT THIS BOOK IS SERIOUS IN ITS PURPOSE AND THAT IT HAS REAL, LEGITIMATE, SUBSTANTIAL VALUE AS AN EDUCATIONAL RESOURCE. I DON'T BELIEVE THERE IS A SUFFICIENT BASIS UNDER EITHER THE FEDERAL LAW OR STATE STATUTE TO JUSTIFY REMOVING THE BOOK FROM THE COLLECTION OF THE LIBRARY." (EMPHASIS ADDED)

THE ABOVE-QUOTED OPINION APPEARS TO BE QUITE DIFFERENT FROM THE NARROW QUESTION OF WHETHER RETENTION OF THE BOOK WOULD BE CRIMINAL OR ILLEGAL. IT SAYS THE LIBRARY HAS NO CONSTITUTIONAL BASIS FOR GETTING RID OF THE BOOK.

HOW IS THIS STATEMENT CONSISTENT WITH YOUR POSITION THAT YOUR ROLE WAS LIMITED TO SIMPLY TELLING THE LIBRARY WHETHER OR NOT KEEPING THE BOOK WAS A CRIME?

IF YOUR RETENTION WAS LIMITED TO THE "SINGLE QUESTION" OF WHETHER IT WOULD BE A CRIMINAL OFFENSE TO RETAIN THE BOOK IN THE LIBRARY'S COLLECTION, WHY DID YOU GO BEYOND THAT IN THE FOREGOING STATEMENT AND OPINE THAT THERE WAS NO

JUSTIFIABLE BASIS FOR THE LIBRARY TO REMOVE THE BOOK IRRESPECTIVE OF CRIMINAL EXPOSURE, WHICH IS WHAT YOUR STATEMENT CLEARLY CONVEYS?

3. HAVE YOU EVER WRITTEN ANY ARTICLES OR GIVEN ANY PUBLIC SPEECHES DEALING WITH FIRST AMENDMENT ISSUES IN GENERAL OR PORNOGRAPHY OR OBSCENITY ISSUES IN PARTICULAR?

A. IF SO, PLEASE PROVIDE ME WITH COPIES OF THEM.

4. IN A 1980 PUBLICATION OF THE SEATTLE BAR ASSOCIATION, YOU CITED "LAW-MAKING BY COURTS" AS ONE OF THE MAJOR ASPECTS OF THE AMERICAN LEGAL SYSTEM THAT "WE HAVE TO BE THANKFUL FOR". HERE'S WHAT YOU WROTE, AND I QUOTE:

"LAW-MAKING BY COURTS. THERE IS NOTHING NEW ABOUT THIS, **AND NOTHING TRULY CONSERVATIVE ABOUT PEOPLE WHO DECRY IT.** THE CENTURIES OLD TRADITION OF THE COMMON LAW IS THAT LAW IS CHANGED, AND NEW LAW IS MADE BY JUDGES. FROM THE EARLY YEARS OF OUR REPUBLIC THE COURTS HAVE HELD AND EXERCISED THE POWER TO PROTECT CITIZEN'S RIGHTS BY HOLDING UNCONSTITUTIONAL AN ACT OF THE LEGISLATURE, **OFTEN EXPAND THE MEANING OF THE CONSTITUTION IN THE PROCESS. THEY SHOULD CONTINUE TO DO SO.** FEW WOULD FAVOR THE ALTERNATIVE, WHICH WOULD BE FOR THE COURTS TO SINK TO THE LEVEL OF MERE "ENFORCERS" FOR THE OTHER BRANCHES OF GOVERNMENT AND THEREBY CONTRIBUTE, IN THE LONG RUN, TO THE LOSS OF OUR SYSTEM OF ORDERLY AND PEACEFUL CHANGE."

A. DOES THE ABOVE-QUOTED STATEMENT STILL REFLECT YOUR VIEW OF THE PROPER ROLE FOR FEDERAL JUDGES -- THAT THEY SHOULD "MAKE LAW", THAT THEY SHOULD "EXPAND THE MEANING OF THE CONSTITUTION", AND THAT THOSE OF US WHO CRITICIZE THIS APPROACH ARE NOT "TRULY CONSERVATIVE"? PLEASE EXPLAIN YOUR ANSWER AS FULLY AS YOU WISH.

5. IN CONNECTION WITH THE ISSUE OF YOUR TERMINATION OF AFFILIATION WITH THE ACLU, MY STAFF HAS BEEN PROVIDED INFORMATION INDICATING THAT ON OR ABOUT APRIL 19-20, 1986, YOU PARTICIPATED IN A BOARD MEETING OF THE ACLU OF WASHINGTON, THE ALLEGED SUBJECT OF WHICH WAS THE BANNING OF BOOKS. PLEASE INDICATE WHETHER OR NOT THIS IS ACCURATE, AND, IF ACCURATE, THE NATURE OF YOUR PARTICIPATION WITH THE ACLU IN CONNECTION WITH THAT MATTER; IF NOT ACCURATE, THE PARTICULARS OF THE INNACURACY.

6. THE EXTENT OF YOUR AFFILIATION OR ACTIVITIES WITH THE ACLU HAS RELEVANCE NOT IN AND OF ITSELF, BUT BECAUSE THE ACLU APPARENTLY WAS AN ACTIVE PARTICIPANT IN THE DISPUTE OVER THE SEATTLE LIBRARY'S RETENTION OF THE PORNOGRAPHIC BOOK, "SHOW ME!". THE "SEATTLE TIMES" OF APRIL 7, 1985, REPORTED THAT THE ACLU "SUBMITTED A LENGTHY DEFENSE OF THE BOOK (I.E., "SHOW ME!") IN CONNECTION WITH THE LIBRARY RETENTION DISPUTE.

A. DID YOU CONSIDER THE ACLU SUBMISSION IN CONNECTION WITH ADVISING THE LIBRARY BOARD THAT THERE WAS NO SUFFICIENT BASIS TO JUSTIFY REMOVING THE BOOK FROM THE LIBRARY COLLECTION?

B. IN LIGHT OF THE FULL EXTENT OF YOUR AFFILIATION WITH AND PARTICIPATION IN ACLU ACTIVITIES OVER THE YEARS, DID YOU CONSIDER WHETHER OR NOT THERE WAS A POSSIBLE CONFLICT OF INTEREST IN RENDERING OBJECTIVE LEGAL ADVICE TO A PUBLIC ENTITY ON A MATTER IN WHICH THE ACLU WAS A FORCEFUL ADVOCATE OF ONE SIDE OF THE DISPUTE? PLEASE EXPLAIN YOUR ANSWER AS FULLY AS YOU WISH.

95-823 O - 89 - 32

October 27, 1987

The Honorable Gordon Humphrey
Senate Judiciary Commitee
Washington, D.C. 20510

Dear Senator Humphrey:

I have received your written questions and am glad to answer them. Some of them were answered at the Committee hearing of October 22, 1987, which you were not able to attend.

1. There is no discrepancy whatever. As I testified at the September 11, 1987 hearing, I advised the Seattle Public Library on related matters (such as the Library's standing to bring a declaratory judgment suit asking a court to decide the legal issue, and the possibility that someone else might start a civil action) that arose in connection with the basic legal question. The question to the City Attorney and myself was whether the Library would be violating any law if it continued to keep the book in the collection. After doing the necessary work my partner and I decided that the correct answer was probably no. I told the board that, in my opinion, the law did not require it to remove the book. I did not say that it lacked the power to remove the book. We discussed the possibility that a civil lawsuit might be brought by some citizen or group whatever the Library's decision might be. I am sure that the board and staff understood, in accordance with our advice, that they could decide on policy grounds whether to keep the book or remove it. They invested a great deal of time and effort in arriving at that decision. The board members discussed their policy reasons for keeping the book at the final public meeting on the subject, and the chief librarian did so in his memorandum to the staff. No one suggested that he or she was under the impression that the Library could not remove the book if it chose to. The City Attorney and I did not take part in the policy decision. The entire matter is described in the testimony of Meade Emory, a member of the Seattle Public Library Board, presented to the Committee on September 11, 1987. Please see also the answer to your second question, below.

2. For the most part this question is answered by the answer to the first question, above. The newspaper quote you have used provides further confirmation that the legal advice was as I have described it. It refers to the absence of "a sufficient basis under either the federal law or state statute to justify removing the book from the collection of the Library." (Emphasis added.) That meant, and I am sure all concerned understood it to mean, that a court would probably not find the Library to be in violation of either the federal or state child pornography law if it decided to keep the book. The assumption in your question about what I told the Library board is simply not correct.

3. The Committee already has copies of the only two speeches of mine of which copies exist (a 1986 speech on trial by jury and one given in 1987 on the future of litigation). I have given a speech on the interrelationship between libel law and the First Amendment to several groups, including the Washington State Historical Society, the University of Washington Law Review Banquet, the City Club, and the Seattle-King County Bar Association. About fifteen years ago I described Rabe v. Washington, after it had been decided, at a lawyers' luncheon sponsored by the ACLU. I do not recall any other speeches on the subjects listed in the question. In all instances, I spoke from very brief notes and there was no prepared text. The two copies that have been supplied exist only because requests were made afterward that the speeches be published.

4. As I testified at the October 22 hearing, the quoted passage referred to two features of our judicial system:

   First, nearly all of the states have been common law jurisdictions since our nation was founded. The central tradition of the Anglo-American common law is that of stare decisis. The substantive rules laid down in cases decided by the highest court in a jurisdiction have the force of law and are binding on lower court judges. Much of the law of torts, property, and contracts, for example, has been developed in this manner.

   The common law tradition is conservative because it helps maintain the law's stability and its ties to the past.

   Second, the United States Supreme Court, since the early 19th century decision in Marbury v. Madison, has

reviewed acts of the state and federal governments for compliance with the United States Constitution. Similar powers of judicial review are exercised by each state's highest court in regard to that state's constitution. Precedent is binding in this field as well, but over a long period of time a court's views of constitutionality may change. To take three examples in the history of the United States Supreme Court: (1) In the 19th and early 20th centuries the Court ruled in a series of cases that the Commerce Clause gave Congress only a narrow power to regulate commerce among the states. Beginning most markedly in the 1930s, the Court has changed that view and has upheld acts of Congress in such fields as labor-management regulation, health and safety legislation, and the definition of crimes affecting commerce. (2) In the early 19th century, the Court's interpretation of the Contract Clause made it a formidable obstacle to many types of state legislation. Under the modern rulings, the Clause is interpreted more narrowly and its effect on the states has been reduced. (3) In the late 19th century "separate but equal" public schools for children of different races were held to be constitutional under the Equal Protection Clause. In the mid-20th century, the Supreme Court ruled that segregation of that type violated the Equal Protection Clause.

Judicial review is a conservative institution because it maintains the Constitution's continuity and integrity while allowing it to adapt where necessary to new conditions.

The appellate courts carry out both the common law function and judicial review. The trial courts' duty is to apply the law accurately as given to them by the legislative bodies and the higher courts.

5. There is no truth whatever in the report you have described. To the best of my recollection I have not been to any ACLU board meeting, even as a guest, for about 25 years. Nor have I been to a meeting with anyone on the subject of banning books.

6. Before accepting any legal assignment our firm makes sure that there is no conflict. We did so in this instance and there was no conflict. The Seattle Public Library matter was not a lawsuit but a consultation in the course of which the board received opinions from organizations and individuals numbering in the hundreds.

We read those materials including the ACLU's submission and the Prosecuting Attorney's memorandum urging removal of the book. What we relied on, however, was our own research and analysis. I had not been a member or cooperating attorney of the ACLU for many years and was not biased either for or against it. I did not and do not agree with what I understand the organization's position to be in regard to child pornography. I had been a lawyer for King County, whose Prosecuting Attorney was asking that the book be removed, and for the Chief of Police, but had never represented the ACLU. I had made financial contributions to the Prosecutor's election campaigns, to various law-enforcement related organizations, and to the ACLU. Neither those contributions nor any other factor diminished in the slightest my independence of judgment or loyalty to the client in advising the Library. As I have explained, I believe the legal advice we gave to the Library was correct, and the same conclusion appears to have been reached by library boards and law enforcement authorities in many other jurisdictions in the United States.

Sincerely,

William L. Dwyer

William L. Dwyer

WLD:kaf

October 27, 1987

The Honorable Patrick Leahy
Senate Judiciary Committee
SD-224
Washington, D.C. 20510

Dear Senator Leahy:

So that the record is complete, I would like to respond to two assertions made by Andrea Vangor that were not touched upon by the Committee's questions to me at the hearing held on October 22, 1987.

First, Dr. Vangor said in her oral testimony that I had "drafted legislation for the pornography industry." That is false. Apparently she was referring to some work I did eighteen years ago for the Motion Picture Association of America (MPAA). The MPAA is a national association of the major film distributors (MGM, Paramount, Columbia, Warner Bros., Twentieth Century Fox, United Artists, et. al.) For many years my firm and I have handled litigation, primarily in the fields of contracts, antitrust, and copyright protection, for MPAA members in the Pacific Northwest. In 1969 the association asked me to help with a bill that was being drafted in the Washington state legislature and that could have some effect on the film industry as well as on newspapers and magazines. I contributed to the drafting of the bill, as did several others. The bill was passed and is now part of the Revised Code of Washington. I did not represent anyone except the MPAA members. I have never drafted legislation, or done anything else, "for the pornography industry."

Second, Dr. Vangor said in her written testimony that I "defended several cases for pornography distributors." That is also false. I have never defended such a person. In the 1960s I handled three cases, two for film exhibitors and one for a bookstore owner, in which my clients were charged under a state general obscenity statute. In all three the clients were acquitted and the materials were found to be lawful. Also in the 1960s, I represented a theatre that showed high-quality foreign films in a civil case, not involving any particular film, in which a city's imposition of prior restraints on motion picture exhibition was held unconstitutional. Finally, in 1972, at the request of the MPAA, I handled the U.S. Supreme Court review of

Rabe v. Washington, in which a unanimous Court upheld the defendant's due process claim. To the best of my recollection, these five cases are the only ones I have handled in this area. None of the clients was a "pornographer" and in every instance the court found in the client's favor.

I believe that Dr. Vangor's other statements were answered at the hearing.

Thank you for your consideration.

Sincerely,

William L. Dwyer

WLD: kaf

KEN CRAWFORD EDUCATIONAL INSTITUTE, INC.
4000 Town Center, Suite 505
Southfield, Michigan 48075

(313) 357-0509

Kenneth C. Crawford, President
2827 29th Street, N.W.
Washington, D.C. 20008
(202) 232 4193

October 24, 1987

Honorable Strom Thurmond
Senate Committee of the Judiciary
147 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Senator Thurmond:

For many years I have been a close friend of Mr. William L. Dwyer. As his nomination to the federal bench is before the Judiciary Committee, I would like to submit this letter for the Committee's consideration.

During the period 1953-1956 I was the Staff Judge Advocate of the Fourth Infantry Division in Germany. Mr. Dwyer served as a first lieutenant under my supervision. I used him as a prosecutor, defense counsel and legal advisor. He served in a truly outstanding manner and favorably impressed many others including the Division Commander, General Clyde D. Eddleman.

From 1967 to 1970 I commanded the Judge Advocate General's School. Virtually every active and reserve judge advocate officer passed through the School in some capacity during that period. As I reflect on Mr. Dwyer's leadership, competence, intellect, integrity, organizational ability, devotion to duty, patriotism, personality and technical proficiency I would rank him

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in the upper one percent of all the officers I have known. This includes the judge advocate officers as well as those in the other branches. I was a regular Army officer for almost 30 years so I am comparing Mr. Dwyer with many others. I retired from military service in 1970.

From 1971-1986 I was the Director of Education and Training for the Federal Judicial Center. I had the reputation of training every federal judge. I took great pride in this accomplishment, and spent many hours reviewing their biographies and records. This has placed me in the position of being able to compare Mr. Dwyer with all of our active and senior judges. Again, integrity, judicial temperament, ethics, legal ability and clarity of reasoning is concerned I would rank Mr. Dwyer in the upper one percent of the judiciary. If appointed to the bench I believe he will eventually be recognized as one of our nation's most outstanding jurists.

Respectfully,
Kenneth C. Crawford
Colonel US Army, Retired

cc: Mr Andy Cairns
Senate Committee on the Judiciary
224 Senate Dirksen Office Bldg
Washington, DC. 20510

JOHN A. GOSE
5400 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7011

September 11, 1987

The Honorable Strom Thurmond
United States Senate
218 Russell Building
Washington, D.C. 20510

Dear Senator Thurmond:

I write you as a resident of Washington state, a long-time practicing attorney, a conservative Republican, and one of the contributors to your campaign.

The purpose of my letter is to endorse the nomination of William Dwyer as U. S. District Court Judge for the Western District of Washington.

I have known Mr. Dwyer for over 35 years. He is articulate, bright, personable, scholarly, and an excellent lawyer. He will be fair and impartial and will do an outstanding job as a U. S. District Court Judge.

I consider it pernicious and a denegration of the legal system of the United States to attack a lawyer for his representation of a client. The people who are attacking Mr. Dwyer seem to lack a basic sense of fairness and have an incorrect view of the lawyer's role under our constitutional system.

Please take this as my whole-hearted endorsement of Mr. Dwyer. We could do no better than to have him on the bench.

Very truly yours,

John A. Gose

JAG:fnb

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* ADMITTED IN ALASKA AND WASHINGTON
** ADMITTED IN CALIFORNIA
ALL OTHERS ADMITTED IN WASHINGTON

DAVID F. MARKLAND, CONSULTANT**
IMMIGRATION AND NATURALIZATION LAW

September 14, 1987

Senator Howell Heflin
728 Hart Senate Office Building
Washington, DC 20510

Re: Appointment of William Dwyer to the District Court for the Western District of Washington

Dear Senator Heflin:

As a member of both the Alabama and Washington State Bar Associations, I am writing you in support of the appointment of William Dwyer to the District Court for the Western District of Washington.

I was born and raised in Montgomery and graduated a year behind Tom at the University of Alabama School of Law. My father Roman Weil and grandfather Lee Weil practiced with the Montgomery firm of Rushton, Stakely, Johnston & Garrett.

Although I do not know Mr. Dwyer personally, I have been amazed with the unanimity of support he has received from the Washington Bar, and in particular, from those attorneys who are mutual acquaintances. All agree; he is bright and honorable. His nomination by both a Democrat and a Republican speaks to this fact.

The docket in the Western Washington District Court is extremely heavy. It is time to place politics aside and appoint this outstanding candidate.

Sincerely yours,

SKELLENGER & BENDER

Kenneth C. Weil

KCW:mlk
cc: William J. Dwyer
9454

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DAVID M. SHELTON

JOHN J. SULLIVAN
JOHN A. STRAIT
OF COUNSEL

September 8, 1987

Senator Robert Dole
Unites States Senator
Senate Office Building
Washington D.C.

Dear Senator Dole:

I write on behalf of William L. Dwyer.

Senate confirmation hearings are about to be held concerning his nomination for appointment as a United States District Court Judge for the Western District of Washington. I do not know if you are on the Senate Judiciary Committee, though it is my memory that in the past you have made reference to the submission of Bill Dwyer's name for consideration by the Senate.

I write to express to you my admiration for the person and judicial qualifications of Bill Dwyer. I simply state my high regard, a recitation of my reasons, I believe, will simply burden the record, adding to the accolades which must have been received by you and by the Senate Judiciary Committee about him.

I have not written to you about a contact which you and I have, and at this time I think it appropriate to make the connection, as a part of my unqualified support for Bill Dwyer.

You were in Company I of the 85th and I was in Company L. You and I were wounded on Hill 909 or 913 (take your choice) on April 14, 1945. That morning as Company L went down off Mt. Della Spe, Company I was to our left crossing the line of departure about fifteen minutes ahead of our reaching a road line of departure, Company I was to our left, and after you crossed the line of departure. I watched the Company I get hit very badly. I Company must have come down from Castel d'Iano, or from the draw between Mt. Della Spe and Castel d'Iano.

Company L had been on top of Mt. Della Spe for about ten days, with heavy casualties. We crossed the line of departure at Core Iussi. The 85th attack was at about 9:15 in the morning and many of us were hit by 11:00 AM, leaving the surviving

MACDONALD, HOAGUE & BAYLESS
ATTORNEYS AT LAW

wounded the task of getting off the lower slope of 913 to an aid station, to be evacuated. Your friend and mine, Newc Eldredge, of Newport, NH, a member of my platoon, was hit at the line of departure. As I went down the lower slope of Hill 913, Newc and I joined up and climbed to the Third Battalion Aid Station on the slopes of Mt. Della Spe.

I have another and very significant contact with you, in that David M. (Mac) Shelton is a law partner of mine, the son of David Shelton who was with you for a year or more in a veteran's hospital after his being wounded in the Battle of the Bulge.

I did not feel it appropriate at last year's Tenth Mountain Reunion in Seattle to introduce myself to you, for you had many person who wanted to meet with you, and you had obligations to the press.

However, given my deep friendship with Bill Dwyer since 1950, my significant experience with you of April 14, 1945, and my friendship with Mac Shelton's dad, and Newc, I believe it appropriate to write to you about my unqualified support for Bill. He will make an outstanding federal judge. Bill is a very unusual person.

Thanks for your consideration of this letter.

Sincerely,

Kenneth A. MacDonald

KAML01/kam

cc w/enc

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May 6, 1985

Donald R. Ellegood
Director
University of Washington Press
Box C - 50096
Seattle, WA 98145-5096

Dear Mr. Ellegood:

It is my pleasure to inform you that the University of Washington Press has been selected to receive an American Bar Association Certificate of Merit for "The Goldmark Case: An American Libel Trial".

This award to the University of Washington Press is being presented for your entry in the 1985 American Bar Association Gavel Awards Competition, in the classification Books.

The citation reads:

> "In recognition of a noteworthy contribution to public understanding of the American system of law and justice. In the national media awards program of the American Bar Association, your entry was chosen by the Gavel Awards Committee as a commendable example of public service."

The Certificate of Merit award, mounted on a walnut plaque, is made in the name of the University of Washington Press, and will be sent to your attention. Personalized certificates will also be sent to William L. Dwyer, Marilyn Trueblood, Audrey Meyer and Julidta Tarver.

A news release will be issued by the American Bar Association for publication June 7, announcing the Gavel Award and Certificate of Merit winners for 1985. Prior to this public announcement, I would appreciate it if you would keep this information confidential.

STANDING COMMITTEE ON GAVEL AWARDS

My heartiest congratulations on winning this award. We appreciate the fine work your organization is doing to promote better public understanding of the American legal system.

Sincerely,

Helen Viney Porter

Helen Viney Porter
Chairman

HVP:rmt
2429z/7-8

cc: Marilyn Trueblood
William L. Dwyer
Audrey Meyer
Julidta Tarver

American Bar Association

Certificate of Merit

presented to

William L. Dwyer University of Washington Press

"The Goldmark Case: An American Libel Trial"

In recognition of a noteworthy contribution to public understanding of the American system of law and justice. In the national media awards program of the American Bar Association, your entry was chosen by the Gavel Awards Committee as a commendable example of public service.

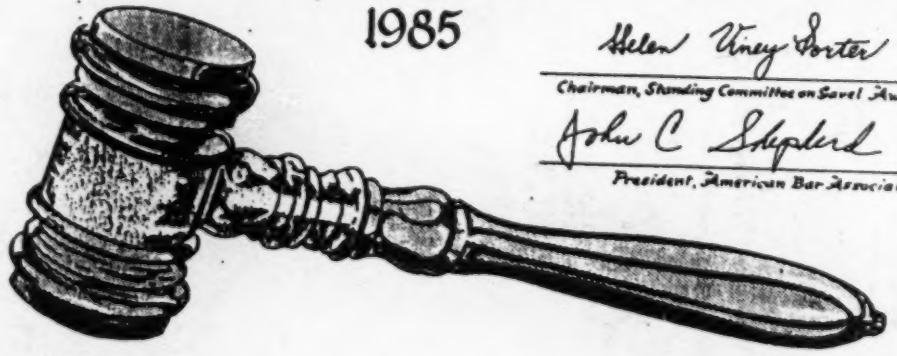
1985

Helen Viney Porter

Chairman, Standing Committee on Gavel Awards

John C Shepherd

President, American Bar Association



Steve Stoda, Chicago

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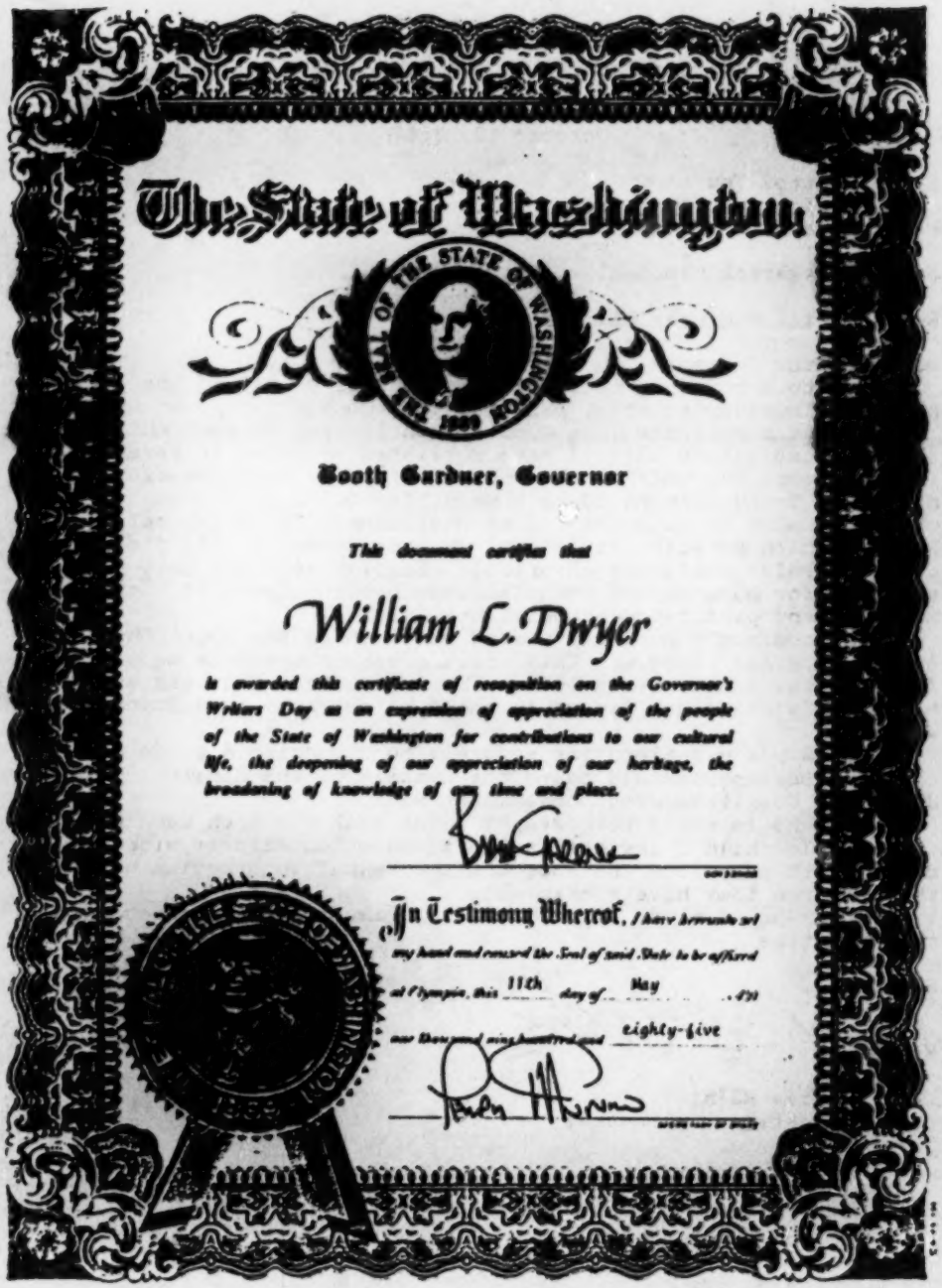

The State of Washington

Booth Gardner, Governor

This document certifies that

William L. Dwyer

is awarded this certificate of recognition on the Governor's Writers Day as an expression of appreciation of the people of the State of Washington for contributions to our cultural life, the deepening of our appreciation of our heritage, the broadening of knowledge of our time and place.

In Testimony Whereof, I have hereunto set my hand and caused the Seal of said State to be affixed at Olympia, this 11th day of May A.D. one thousand nine hundred and eighty-five

Richard P. "Toby" Tyler
P.O. Box 1393
San Bernardino, CA 92402-1393

October 19, 1987

Senator Strom Thurmond
Senate Judiciary Committee
Washington, D.C. 20510

Attention: Frank Klonoski

Re: Judicial Nominee: William Dwyer

Dear Senator Thurmond,

Due to a schedule conflict, I am unable to attend the hearings Thursday to offer personal testimony.

I am a supervisor in a specialized law enforcement child abuse investigative unit. I have published articles in several international journals on the subject of child pornography. I have also found Show Me to be a major factor in many cases of child sexual victimization. I am enclosing a "Biographical Review" which details (at length) my experience in this field.

I am also enclosing an article (English version) that I prepared for Surete, a French language publication published in Montreal and circulated internationally.

The nominee's publicly stated position on the book "Show Me" causes me great concern. Child pornography has been a major focus of the Senate since 1977. The legislation that has evolved has had a significant impact on child pornography production worldwide.

Mr. Dwyer's failure (or refusal) to recognize Show Me as child pornography should cause the members of the Senate Judiciary Committee great concern as well.

Show Me is child pornography. The book has been used by innumerable child molesters in their seduction efforts with children to normalize the sought after sexual interaction with the children they have victimized.

Thank you for the opportunity to communicate my concerns to the Committee.

Sincerely,

Richard P. "Toby" Tyler

Copy: Andrew Rainier,
Investigative Counsel

Statement of Richard P. "Toby" Tyler regarding the nomination of William Dwyer as Judge For United States District Court.

My comments will focus on Mr. Dwyer's publicly stated opinion of the child pornography publication: "Show Me."

The book "SHOW ME," published by St. Martin's Press (English language edition - copyright 1975), claims, on the title page, to be, "A Picture Book of Sex for Children and Parents."

Show Me is a book which I know well. I have been involved in various capacities (affiant, co-affiant, investigator, consultant or expert witness) in at least fifty (50) felony child sexual abuse/exploitation cases where Show Me was used by the offender to facilitate the seduction of the child or children.

This is not to suggest that a child is exposed to Show Me and immediately surrenders their body to a child molester. It is to suggest that Show Me is used to incite a child's curiosity about sex, to create a sense of wonder and awe at the activities depicted therein and to convince the child that the depicted activities are not only normal - they are desirable. The adult who is exhibiting Show Me to a child is often an adult whose objective is the seduction of the child.

The child molester who uses Show Me is not seeking to satisfy the child's curiosity - their objective is to incite the child's curiosity, to convince the child that sexual interaction is fun, normal and acceptable. Show Me does an excellent job of facilitating this objective.

Mr. Dwyer reportedly stated, at a public meeting of the Seattle Library Board, that "The courts would clearly hold that

this book is serious in its purpose and that it has real, legitimate, substantial value as an educational resource. I don't believe there is a sufficient legal basis, under either the federal law or state statute, to justify removing the book from the collection of the library."

I agree with isolated parts of that statement, and, obviously, I disagree with the substantive message of the statement. The claim that "the courts would clearly hold that this book is serious in its purpose and that it has real, legitimate, substantial value as an educational resource" suggests that Mr. Dwyer, as a member of a court, would issue such a finding. However, the appellate court in the State Of Washington (State v. Hugh Jefferson Marshall 10209-9-II) has found that Show Me violates Washington's statute prohibiting possession of child pornography (while the Stanley v Georgia argument relating to personal possession of child pornography is often argued - the purpose of this document is not to address that issue [although the Washington Appellate Court did so in their opinion]).

I agree that Show Me has educational value, especially in view of the fact that so many victims have revealed that Show Me was their initial "educational" introduction to the concept of "sex is fun - sex is okay." This introduction, unfortunately, was presented by an adult who exploited the child.

The child molester who uses Show Me as a means of introducing a child to sex is seeking to encourage the child to participate in the activities graphically depicted in Show Me.

Their objective is to create "a normalization factor to allay a child's fears concerning unnatural child-adults relations'."

Show Me clearly states that sexual interaction is fun and feels good, and even discusses sexual interaction as a means of expressing love -a concept that most healthy adults agree with. Unfortunately, Show Me does not realistically address the issue of child sexual abuse the real world. Show Me refers to child sexual abuse on page 158, where Show Me encourages parents to warn children not to accept invitations from strangers; that they [the strangers] force children to engage in sex play and that "these people get nasty and beat them up and don't bring them back to their parents" if the children fail to cooperate.

It is well known that most sexually abused children (80% to 90%) are molested by persons known and trusted by them and/or their families.

The message contained in Show Me is clear: Sexual interaction with someone you care for, with someone you want to make happy - is fun, it feels good and is loving. From the perspective of a child molester, no message could be more desirable and more valuable.

' See People v. Gill, California 5th Circuit Court Of Appeal, reported October 12, 1987 in the Daily Journal [People v. Gill 87 D.A.R. 7450]. The court recognized the "normalization" use of harmful matter in child sexual abuse.

The cited case did not refer to Show Me, however, Show Me features children and the message in Show Me is directed to children which arguably makes Show Me more valuable as a "normalization" tool.

THE INTERNATIONAL EXPLOITATION OF CHILDREN: CHILD PORNOGRAPHY

BY:

R.P. "TOBY" TYLER, DETECTIVE SERGEANT
SAN BERNARDINO COUNTY (CALIFORNIA) SHERIFF'S DEPARTMENT
AND
ASSOCIATE CLINICAL PROFESSOR OF PEDIATRICS
LOMA LINDA (CALIFORNIA) UNIVERSITY

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(FEBRUARY 1985)

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CORRESPONDENCE:

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Sheriff's Department
P.O. Box 569
San Bernardino, California USA 92402
Phone: (714) 383-3971 extension 232

DEFINITIONS:

1. **CHILD EXPLOITER** as used herein refers to persons who use children in the production of original child pornography, id est, child molester/pornographers.

2. **CHILD PORNOGRAPHY** as used herein refers to pictorial depictions (photographs, slides, movies and video tapes) of children in sexually explicit poses and acts alone; with other children; with adults; or with animals.

THE INTERNATIONAL EXPLOITATION OF CHILDREN: CHILD PORNOGRAPHY

R.P. "Toby" Tyler

Child erotica is a broad and encompassing term which includes any material, relating to children, that is sexually arousing to an individual.[1] This article will focus on one aspect of child erotica: explicit child pornography. There is an important distinction between child erotica and child pornography. Although both are used for the sexual arousal/gratification of the collector, child pornography has the more important component of direct child sexual exploitation as a prerequisite to its existence. Moreover, one insidious purpose of child pornography is to perpetuate the sexual victimization of children.[2]

Unlike sketches, drawings, paintings and statues, which may or may not have employed child models, child pornography requires that a child must be sexually exploited in order to produce the final product.[3]

Sexually explicit pictures of children engaging in sexual activity with adults, other children and animals have existed since the earliest forms of pornography came into existence. Indeed, such material was sold in Europe as early as 1862.[4] As the camera became more accessible to consumers, the use of children as models proliferated, as the following example will illustrate.

AN EARLY CHILD PHOTOGRAPHER

One of the earliest photographers who took special pleasure in photographing young girls "... in any amount of undress" was Charles Lutwidge Dodgson (1832-1898), a clergyman (Deacon) and mathematical lecturer at Oxford University's Christ Church College. The first references in Dodgson's diaries to photographing a nude girl child are dated May 21, 1867, in which he refers to having photographed Beatrice Latham, age six (6) "sans habilement" [sic]. Dodgson photographed a veritable parade of nude girls, although only a small number of these photographs still exist.[5]

Though the photographs which have survived would not likely be considered obscene by today's standards, in the Victorian era, nudity, in and of itself, was considered to be scandalous and shocking.[6]

Did these child models perceive themselves as exploited, notwithstanding the absence of any evidence of physical molestation (or vice versa)?

While at least one author claims that Dodgson was an "avid collector" of child pornography,[7] others have defended Dodgson,[8] suggesting that children were perceived as asexual at this time in history. However, it is unlikely that this is so since child prostitution and child pornography flourished during this same period.[9,10] This would suggest that society's claimed perception of children as asexual was a societal denial of the realities of child sexual exploitation, a denial which society has only recently began to abandon.

In 1880, Dodgson abandoned photography, and it has been speculated that he did so in order to avoid a scandal. In fact, after Dodgson's death, his nephew, who did not wish to "lift the veil from dead sanctities" deleted portions of Dodgson's diaries.[11]

Dodgson was also a writer. In addition to his published works relating to mathematics,[12] his writings included many books of children's stories. His best known books include "Alice's Adventures In Wonderland" and "Through the Looking-Glass". Charles Lutwidge Dodgson is the true name of Lewis Carroll.[13]

CHILD PORNOGRAPHY TODAY

Production of child pornography has flourished and is now identified as a multimillion[14] to multibillion dollar international business.[15] The original production, as well as the subsequent distribution and sale of child pornography is a secretive business, making an accurate determination of the extent of the problem impossible. Estimates of the number of children

involved range from the thousands to the hundreds of thousands.[16,17] While available statistics cannot be verified and the facts and figures vary, a review of the child pornography available on the commercial markets of the world makes one fact clear: a significant number of children are being sexually exploited through the medium of child pornography.[18]

Child pornography has been sold, at times without legal interference, in the United States, Denmark, Sweden and The Netherlands (Holland). In addition to sales across the counter, the material is distributed throughout the world via the mail.[19]

In recent years, there has been an increasing level of public awareness regarding the problem of child pornography, primarily the result of media exposure of the problem. The result has been public pressure on legislators and law enforcement agencies in various countries to implement laws to prohibit child pornography as well as enforcement of those laws already in place.[20]

In 1977, the United States Government outlawed child pornography, and by the end of 1980, both Denmark and Sweden had passed legislation to prohibit child pornography.[21] In July of 1984, the Amsterdam (Holland) Police initiated enforcement action against sellers of child pornography, effectively removing the material from retail stores in that city.[22] Finally, in November, 1984 the Dutch Parliament began consideration of a law to prohibit child pornography.[23]

Those laws and actions which have been implemented in an effort to repress child pornography often address the issue from the perspective of preventing child abuse, [24,25] rather than restrictions on pornography per se, due to the freedom of the press which is so valued in western countries. In other words, in spite of the importance of freedom of the press, society has established a higher priority: children should be free from sexual exploitation.

In spite of these needed changes, commercial child pornography mail importations continue to be identified as a significant problem in both Canada and the United States.[26]

CHILD EXPLOITERS AND THEIR VICTIMS

Child exploiters may prefer children of the same sex, opposite sex or both sexes.[27] Commercial child pornography has featured sexual acts with children of both sexes and all ages, even infants.

Child exploiters have been identified as teachers, members of the clergy, law enforcement officers, doctors, laborers - in other words, child exploiters represent a cross section of the community and are often found to be highly respected members of the community. In fact, the most successful child molesters (success measured in terms of large numbers of victims and escaping detection for many years) are virtually always trusted members of the community, usually known for, indeed, even honored for their work with children vocationally and/or avocationally.[28]

CHILD PORNOGRAPHY COLLECTORS

Creating child pornography and collecting material prepared by others (either commercially obtained or traded) is found to help child molesters satisfy and reinforce their compulsive and persistent sexual fantasies about children.[29,30,31,32] Collecting large quantities also fulfills the need for validation, because they see others are engaging in the same or similar activity with children.[33]

When a child exploiter pictorially records their sexual activity with children, they can be assured that although the child may continue to get older, growing out of the age or developmental preference of the exploiter, the image of the children in the pictures, movies or tapes will never get older. Therefore these children, even years after their victimization, may continue to be a very important part of a child exploiter's sex life[34,35] (as he views the material and recalls the activity, usually accompanied with masturbation).

Child pornography which depicts specific victims can be used as blackmail to force the children depicted therein into continuing the exploitive relationship,[36] and even to force the victim to recruit other child participants.

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Persons who make child pornography often amass substantial private collections of the material.[37] It is important to note that child exploiters rarely, if ever, destroy their collections of child pornography. They may exert great effort to secrete their collections when threatened with discovery, but their collections are such an important part of their lifestyle, destruction is rarely considered. The author has discovered collections that were accumulated during a forty (40) year career of molestations.

PERPETUATING THE SEXUAL VICTIMIZATION OF CHILDREN

In the author's opinion, the most insidious use of child pornography is to perpetuate the sexual victimization of children.

Studies and investigations have established that most child molestations are perpetrated by persons who have trusted access to children, persons who the children trust - often persons who are in a caretaker position of authority over the child.[38,39,40,41,42]

When these persons are initiating their efforts to effect the sexual abuse of a child, they will often exhibit pornography to the target victim, capitalizing on the natural sexual curiosity which children have.[43]

This may be done by allowing the child to "accidentally" discover the material, after which the exploiter will insure that he "catches" the child with the material, to create a sense of guilt in the child. The child will then be reassured "that it will be our secret," as this creates a very important component in child molestation cases: secrecy.[44]

The exhibited pornography may consist exclusively of material which features adults in lewd poses or activities. In other cases, the pornography featuring adults will be shown to the child first, and after arousing the child's interest in the activities depicted, child pornography is introduced to endorse and encourage the participation of the child in similar activities.[45]

In other cases, the pornography will be exhibited under the guise of "sex education." For example, the book Show Me[46] purports to be a sex education text for children and depicts children in various sex acts, including masturbation, oral copulation and vaginal intercourse. This book, writes a medical doctor, "...stresses the pleasure of sex as well as the biology," and according to a church spokesman is intended to "...evoke hours of informative and warm, intimate conversation among children, their parents and teachers [and] communicates the joy of physical closeness, tenderness, mutual appreciation and affection...of relating to another with a unity of body and spirit."[47]

Not surprisingly, Show Me is found with regularity during searches of child exploiters homes, and victims often report that exposure to this book preceded the initial act of molestation.[48] As a child, how can you doubt your parent, teacher or other trusted person, when a very "attractive"[49] book is endorsing the behavior sought by the adult exploiter?

The motive is the same, regardless of how the material is exhibited: to lower the victim's inhibitions; to create sexual arousal in the victim; to incite the curiosity of the victims regarding the activities depicted; and to convince the child that "since it is in a book, it must be okay!"[50]

After successfully enticing, coercing or "seducing" the child into participating in activity similar to that depicted in the commercial material, the child exploiter will attempt to convince the victim to participate in posing for similar pictures.[51] In fact, child pornography magazines frequently include pictures of children viewing child pornography and replicating the poses/scenes depicted therein.[52]

Child exploiters can also trade their personally created material with other child exploiters, throughout the world, which allows them to increase the size of their personal collection.[53]

There are even child sex rings which encourage child participants to recruit other children. Other child sex rings are composed of multiple adults sharing multiple children in the production of child pornography.[54]

Participants may find others with similar interest through advertisements in the child pornography magazines or other underground publications which cater to this population. Some of these advertisements will be very direct while others will be acceptable to even legitimate newspaper's classified "personal" columns:

> "Family man seeks others with similar interest."[55]
>
> "Love them young and innocent! Will buy photos, magazines (and) video tapes of young girls or boys..."[56]

While some child exploiters sell their material to commercial child pornography publishers / producers, others trade their material to the commercial producers who distribute child pornography on a world wide basis.[57] Child pornography magazines contain pleas from the publishers for new material:

> "This magazine can only exist if you help us! Send us photos from your collection! Thanks!"[58]

The pornography offered to the commercial producers may be material which the contributor created originally or it may be material which has been acquired by trading with other child exploiters.[59]

Typically, a commercial producer of magazines will offer compensation of one magazine for each picture submitted,[60] which becomes the source material for future issues of their magazines. These photographs, when subsequently published, will then be used by other child exploiters to continue perpetuating the sexual victimisation of children.

SECRECY

For obvious reasons, the child molester/pornographer wants his activity to remain secret and he will so instruct his victims. In addition to the previously described methods of investing the victim in the need for secrecy, threats of physical harm, to the victim and/or the victims family, may be made to insure secrecy.[61] Some offenders have even threatened to exhibit or otherwise circulate the pornographic pictures of the victim if the secret is not kept.[62,63]

They will also use other methods to convince the child to keep the secret. For example, a child participating in such activity will be told to "SMILE!" at the moment the picture is to be exposed. If the child exploiter has a remote control device for activating the camera, they may have the child control the remote device[64] in some of the pictures/scenes, insuring that the child's participant action is clearly recorded. Either of these methods will increase the sense of guilt in the mind of the victim, a sense of being a co-conspirator, rather than a victim.

Victims of child pornography have ambivalent feelings about the existence of the pictorial record of their activity. While they do not want the child exploiter to retain the material,[65] the victim is also concerned with how they will be perceived by investigators who view the pictures of them smiling, appearing eager to participate and even taking some of the pictures. As a result of these ambivalent feelings, some children who are identified as victims of child molestation may be reluctant to reveal the existence of the pictorial records which depict their participation.

As a result of this reluctance, investigators should not assume that children who report sexual victimization will always reveal the existence of pictorial records (the best possible evidence in such cases). Investigators who conduct child molestation investigations should include, as a part of their investigatory protocol, sensitive questioning which will not only allow the child to reveal the existence of such material, but will encourage the child to make such revelations.

CONCLUSION

Child pornography is a dangerous product. Not only are the children depicted therein victimized, the material is used to perpetuate the sexual victimization of still more victims.[66,67,68,69,70,71]

Commercial child pornography has been circulated throughout the world, both via the mail and across the counter in various countries. Various nations have enacted legislative remedies, or are considering such remedies, and these actions have served to decrease the amount of child pornography that is commercially available.[72] In fact, while the commercial sale of child pornography has been driven further underground, one benefit to dealers in the material has been the opportunity to increase their prices (as much as $25. U.S. for a magazine with less than 50 pages), due to "supply and demand" factors present in any business.

The international exchange and trade of child pornography between individual exploiters appears to be a growing problem.[73] Increasing numbers of cases in which home video cameras and recorders have been used to record the sexual exploitation of children suggests that this technology will provide new avenues for the exploitation of the world's children.

Investigators who are aware of the realities of child pornography can play an important role in eradicating this form of child sexual victimization.[74,75]

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School of Nursing
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Philadelphia, PA 19104-6096
215-898-8281

September 21, 1987

Senator Joseph Biden
Chairman
Senate Judiciary Committee
U.S. Senate
Washington, D.C. 20510-0802

Dear Senator Biden:

I am writing to request the opportunity to testify at the hearings regarding the nomination of William Dwyer to the Western Washington District Court.

I am a registered nurse and a professor of nursing at the University of Pennsylvania. My research focus since 1972 has been in the area of sexual victimization. I was principal investigator of two federal grants on the subject of sexually victimized children: The Use of Children in Pornography (Natinoal Center on Child Abuse and Neglect) and the Possible Linkages Between Child Sexual Abuse, Juvenile Delinquency, and Criminal Behavior (Office of Juvenile Justice and Delinquency Prevention).

I have learned that Mr. Dwyer was hired to advise the Seattle Public Library Board about the legal status of the book Show Me when child advocates were trying to get their local prosecutors to take action against the book. It is my understanding that Mr. Dwyer claimed that "the courts would clearly hold that the book is serious in its purpose and that it has real, legitimate, substantial value as an educational resource".

I would like to testify that, based on my research, the book Show Me is pornographic exploitation of children and that there is no educational value in such literature. The book shows pictures of sexual acts between children with no discussion of social or moral responsibility noted in the text. Such explicit sexual pictures show children trying to make sexual decisions and presuming behaviors about another child before that child may be ready to make such a decision. Children viewing such material are given full sanction to then proceed to act and perpetuate unwanted sexual acts with other children. We know this behavior occurs since the book is frequently found in the collections pedophiles and child victims have told us that the book was used to demonstrate what to do to other people's sexual organs.

The statements made by Mr. Dwyer suggest he will represent a particular viewpoint on childhood sexuality. Our research indicates that showing active sex between children is not helpful and that peer sexual relationships are not as harmless as some would try to make us believe. Mr. Dwyer is drawing conclusions from a unilateral position regarding children making sexual decisions adn as such does not suggest a valid legal opinion.

Sincerely,

Ann W Burgess

Ann W. Burgess, DNSc
van Ameringen Professor of Psychiatric
Mental Health Nursing

AWB:cg

UNIVERSITY OF WASHINGTON
SEATTLE, WASHINGTON 98195

CDMRC
Clinical Training Unit
Adolescent Clinic

March 29, 1985

Re: Show Me by Dr. Helga Fleischauer-Herdt and Will McBride

To Whom It May Concern:

I have recently been asked to comment on the book, Show Me, by Dr. Helga Fleischauer-Herdt and Will McBride. I have had this book in my personal library here at the University of Washington Adolescent Clinic for many years and have found frequent use for it.

I am Professor of Pediatrics and Director of Adolescent Medicine here at the University of Washington and I have worked in the field of Adolescent Medicine since 1959. I have published a number of articles regarding adolescents, their development, and adolescent sexuality. Among my other duties I am responsible for the teaching of human sexuality in the School of Medicine. I am also Director of the program here at the University for the evaluation and treatment of juvenile sexual offenders (youth under 18 years of age).

I do not feel that this book is in any sense pornographic. It was designed as an educational tool and I feel there is a great deal of need for this type of material. Explicit though it may be, there are a number of instances where pictures of the sort shown in this book are necessary. We frequently have many young people who have difficulty in understanding words and visualization is much more effective. An example would be, some of our retarded youth who come to the clinic; many of these young people are or will soon be sexually active, but their knowledge concerning appropriate sexual behavior is almost nil. I have found it very useful to use this book as an adjunct in talking about sexuality to many of my moderately retarded patients.

I feel that one of the biggest causal factors in sexual acting-out and sexual offense behavior is ignorance on the part of many young people. I have been struck by a number of youth who have been seen in our clinic for having committed sexual offenses, most frequently against younger children. Most of these young people have been referred by the Juvenile Court system. The striking thing about these young offenders is their total ignorance regarding sexuality. It is my firm conviction that one important means of dealing with this extremely common problem is better sex education. Only a very small number seem to have much of an awareness of human sexuality or appropriate

sexual behavior. The great majority of the young people we see in our clinic feel that sex is "bad" or "dirty". Nevertheless, their behavior is often itself "bad" or "dirty". It is my feeling that we would have a far smaller number of younger sexual offenders were they more aware of basic facts concerning human sexuality.

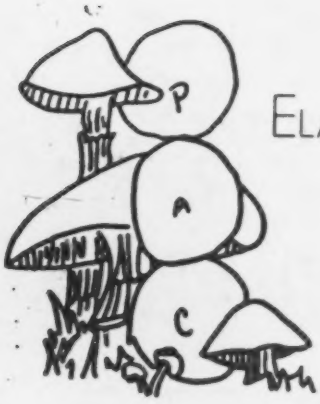
It is also my feeling that this book may be more effectively used by a parent or a responsible adult with the child than by the child simply looking through the book in an unsupervised manner. This is particularly true with younger children.

I feel very strongly that if material of this type if withdrawn from public access we will simply increase the number of uninformed young people and destructive, acting-out sexual behaviors.

Sincerely,

Robert W. Deisher, M.D.
Professor of Pediatrics
Director
Division of Adolescent Medicine WJ-10
Department of Pediatrics
University of Washington

RWD:mld



ELAINE CHILDS-GOWELL, R.N., Ph.D.
1211 E. Boston St., Seattle, WA 98102

March 15, 1985

Seattle Library Board:

It has come to my attention that you are seeking information about the book Show me. I have used it in raising my children, and I use it as a therapeutic tool. I think that it is an excellent resource for teaching about human sexuality.

I am an Anthropologist, and a Psychiatric Nurse Practitioner in private practice in Adult Psychotherapy. I have been in practice for 15 years. Before establishing my practice I was on the faculties of The University of Washington, Dillard University and Tulane University where I taught Family and Community Nursing, and Preventive Psychiatry to graduate and undergraduate nursing students. I have been a field faculty for Antioch University for twelve years, advising and teaching graduate and undergraduate students in psychology. At present my client population represents at least 80% people who experienced some form of sexual abuse as children, adolescents or as young adults.

I find the book Show Me to be a very important therapeutic tool in my practice. There are three major ways in which I use it. Number one is with people who have body image problems. The book is helpful in helping people work through self hate and poor self esteem issues related to their physical body. The second way, is in dealing with issues of sexual dysfunction on an adult level. The third, and probably most powerful intervention the book provides is in doing regressive work and reparenting. The book provides the basis of discussions with adult clients who are regressed to childhood ages which are significant to them in terms of their experiences with their own sexuality.

It is dynamite with victims of child molestation and incest. The banning of Show me would deprive me and my clients of an interventive technique which I have found to be invaluable.

I hope that the Library Board will be able to find the book acceptable for public use. It is my opinion that persons who find it objectionable, or who use it inappropriately such as pedophiles are probably reacting to archiac issues in their own psychological structure.

Should you require further information from me, please feel free to contact me.

Sincerely yours.

Maura Chute Gnoell

QUESTIONNAIRE FOR JUDICIAL NOMIRECEIVED III 1 3 1987

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name

Raymond Kenton Musgrave

2. Address

Residence: 2717 Paseo Del Mar
Palos Verdes Estates, CA 90274

Office: Santa Barbara Applied Research Corp.
17313 Sunset Boulevard
Pacific Palisades, CA 90272

3. Date and Place of Birth

September 7, 1927
Clearwater Florida

4. Marital Status

Married to the former Ruth Shippen Hoppe, May 7, 1949.
Spouse is not employed.

5. Education - List each college and law school attended, including dates of attendance, degrees received, and dates degrees were granted.

Georgia Institute of Technology	1945-46	
University of Florida	1946-47	
University of Washington	1947-48	B.A., 1948
Lamar School of Law, Emory University	1950-53	J.D., 1953

6. Employment Record - List all businesses...with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1985-	Santa Barbara Applied Research	V.P. & Director
1979-85	Vivitar Corporation	V.P. & Gen. Counsel
1975-79	Pacific Lighting	Asst. Gen. Counsel
1973-75	Musgrave, Welbourn & Fertman	Partner
1963-73	Mattel, Inc.	V.P. & Gen. Counsel
1953-63	Lockheed International, Inc.*	Asst. Gen. Counsel

*And Affiliates

7. Military Service - Have you had any military service?

No. (Served two years in Reserve Officers Training Corps.)

8. Honors and Awards

Was only graduate in law school graduating class to receive the Juris Doctor degree, which at the time required having been on the Dean's List for scholastic achievement, and an acceptable doctoral dissertation.

9. Bar Association - List all bar associations, legal or judicial committees or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

State Bar of California	1953-Present
Chairman, Corporate Law Section	1965-66
Delegate	1966-67
Los Angeles County Bar Association	1963-Present
State Bar of Georgia (Inactive)	1953-Present
International Bar Association	
Pan American Bar Association	
American Bar Association	1953-86

10. Other Memberships - List all organizations to which you belong that are active in lobbying before public bodies.

I am director of the Foreign Trade Association of Southern California, which occasionally takes positions on various trade matters.

Also:	Morris Animal Foundation	Trustee
	Pet Protection Society	Honorary Trustee

Note: Have also served, in the past, as a member, director or trustee of various charitable organizations, such as United Way, League of Women Voters, Palos Verdes Community Association, South Bay-Centinela Service Organization, Save the Redwoods League, and The Sierra Club.

11. Court Admission - List all courts to which you have been admitted to practice, with dates of admission...

Supreme Court of the United States	1962
Supreme Court of California	1962
Supreme Court of Georgia	1953
Court of International Trade	1963
Court of Appeals for the Federal Circuit	1984
District Court for the Central District of California	1962
Circuit Court of Appeals for the Ninth Circuit	1962

12. Published Writings

None

13. Health - What is the present state of your health? List the date of your last physical examination.

Excellent
September, 1985

14. Judicial Office

None

15. Citations - If you are or have been a judge...

Not Applicable

16. Public Office - State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

17. Legal Career

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
2. whether you practiced alone, and if so, the addresses and dates;
3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

After graduation from law school, I joined the Lockheed Aircraft Corporation. In 1961, I transferred from the law department of the parent company to its subsidiary, Lockheed International, in Los Angeles, handling international transactions in Western Europe, Japan, Hong Kong and the Far East.

In 1963, I was offered, and accepted a position as General Counsel of Mattel, Inc. As Vice President and General Counsel, I supervised a staff of ten attorneys as well as outside counsel. Foreign licensing and acquisitions were negotiated in numerous foreign countries as well as in the United States.

In 1973, I formed the law partnership of Musgrave, Wellbourn and Fertman, in El Segundo, California. This firm specialized in customs law, international transactions and commercial law.

17. Legal Career (continued)

In 1975, I was offered, and accepted the position of Assistant General Counsel of Pacific Lighting Corporation, Los Angeles, where I supervised a staff of approximately 100, handling the whole range of corporate legal matters, including securities issuance and international transactions.

In 1979, I joined the Vivitar Corporation in Santa Monica, California as Vice President and General Counsel.

Vivitar Corporation was a major distributor of photographic products, and while there I negotiated licenses and other agreements in the Far East and Western Europe. Due to the increased pressures of Japanese competition and "grey market" importations, Vivatar slowly contracted its business, reducing its work force by approximately 80%. In 1985, the position of General Counsel was eliminated, and the company relied, for whatever legal requirements arose, on outside counsel. (Vivitar was subsequently sold to Australia interests).

I am now an officer, director and shareholder in a small minority-owned research company, Santa Barbara Applied Research, Pacific Palisades, California. This company engages in both classified and non-classified projects for U.S. Government agencies and prime contractors, and handles international transactions for Taiwan and other Far East interests.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

My practice has been almost exclusively corporate, with emphasis on international transactions and customs law.

2. Describe your typical former clients, and mention the areas, if any, in which you specialized.

Typical clients were corporations engaged in international commerce. In addition to corporate securities, I specialized in international licensing, acquisitions, and other corporate formations, export and import transactions, and customs law matters.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I have appeared in state and federal courts occasionally, primarily in cases relating to customs law. Since the rather well-known cases of Vivitar vs. United States (cited below), I have been in semi-retirement, and have not appeared in court.

17. Legal Career (continued)

c. 2. What percentage of these appearances was in:
(a) federal courts:

100% were in federal courts.

3. What percentage of your litigation was:
(a) civil
(b) criminal

100% were civil.

4. State the number of cases in courts of record you tried to verdict or judgement (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In the past five years most cases were settled; two in which I was associated counsel (but controlled all aspects of the litigation) were tried to judgement.

5. What percentage of these trials was:
(a) jury
(b) non-jury

100% were non-jury

18. Litigation - Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and final disposition of the case. Also state as to each case:

(a) the date of representation
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

As indicated above, I have, as in-house counsel, selected outside counsel and have directed litigation; I have also practiced preventive corporate and international transactions law, keeping litigation to a minimum. During the ten years that I was general counsel of Mattel, Inc. there was extensive patent and trademark litigation, usually successful; including a rare injunction against a major competitor involving a novel walking toy. Most of these cases were settled without trial. In addition, there was extensive litigation in the U.S. Customs Court. These citations are set out below:

18. Litigation (continued)

- Vivitar Corporation vs. United States, 593 F. Supp. 420 (CIT, 1984); affirmed on other grounds, 761 F. 2d 15552 (CAFC, 1985).

  Issue: Whether the Customs Service may, by regulation, modify the clear language of the statute, 19 U.S.C. 1526.
  Judge, Court of International Trade, Restani.

  Judges, CAFC: Nies, writing for a five judge panel.
  Counsel for Plaintiff: R. Kenton Musgrave; Stein & Shostak (S. Kersner); Wiley & Rein (James Johnstone).

Steven Kersner, Esq.
Brownstein, Zidman & Schomer
1401 New York Avenue N.W.
Suite 900
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(202) 879-5700

Marjorie Shostak, Esq.
Stein & Shostak
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(213) 384-2850

James Johnstone, Esq.
Wiley & Rein
1776 K. Street, N.W.
Washington, D.C. 20006
(202) 429-7060

Counsel for Defendant: David M. Cohen and Velta Melnbrencis, Commercial Litigation Branch, Office of the Attorney General. (202) 724-7691

- Mattel, Inc. vs. United States, 76 Cust. Ct. 84, March 8, 1976.

  Issue: Classification of imported articles as "parts" of the articles into which they were incorporated or under a more specific definition under the Tariff Schedules of the United States.
  Judge: Maletz
  Counsel for Plaintiff: Musgrave, Welbourn & Fertman
  Counsel for Defendant: Michael S. O'Rourke and Saul Davis, Office of the Attorney General.

Saul Davis, Esq.
Commercial Litigation Branch
Department of Justice
26 Federal Plaza
New York, NY 10278
(212) 264-9232

Michael S. O'Rourke, Esq.
Rode & Qualley
295 Madison Avenue
New York, NY 10017
(212) 685-4437

- Mattel, Inc. vs. United States, 377 F. Supp. 955; 72 Cust. Ct. 257, June 5, 1974

  Issue: Whether small imported wigs were properly classified as "parts" of dolls or as "wigs."
  Judge: Maletz
  Counsel for Plaintiff: R. Kenton Musgrave; Barnes, Richardson & Colburn, (Joseph Schwartz) Associate Counsel. (Mr. Schwartz is diseased)

18. Litigation (continued)

Andrew Vance, Esq.
Barnes, Richardson & Colburn
475 Park Avenue
New York, N.Y. 10017
(212) 725-0200

Counsel for Defendant: Velta A. Melnbrencis, Office of The Attorney General
(202) 724-7691

* Modern Clothing, Inc. vs. United States, 73 Cust. Ct. 233, September 27, 1974

Judge: Malitz
Counsel for Plaintiff: Musgrave, Welbourn & Fertman.
Counsel for Defendant: Saul Davis and Michael S. O'Rourke, Office of The Attorney General.

* Mattel, Inc., vs. United States, 65 Cust. Ct. 616, December 18, 1970

Issue: The proper classification of certain small imported wigs.
Judge: Maletz
Counsel for Plaintiff: R. Kenton Musgrave; Barnes, Richardson, & Colburn; Irell & Manella (Richard Borrow)

Richard Borow, Esq.
Irell & Manella
1800 Avenue of the Stars
Los Angeles, CA 90067
(213) 277-1010

Counsel for Plaintiff: Barnes, Richardson & Colburn and R. Kenton Musgrave
Counsel for Defendant: Andrew P. Vance and Arthur E. Schwimmer, Office of the Attorney General.

Arthur E. Schwimmer, Esq.
2049 Century Park East
Suite 1800
Los Angeles, CA 90067
(213) 277-8448

* Mattel, Inc. vs. United States, 65 Cust. Ct. 616, December 18, 1970

Issue: Proper construction of the U.S. Tariff Schedules.
Judges: Watson, Maletz and Re

18. Litigation (continued)

Counsel for Plaintiff: Barnes, Richardson & Colburn (Joseph Schwartz); Irell & Manella (Richard Borow); and R. Kenton Musgrave.

Counsel for Defendant: Velta A. Melnbrencis, Office of The Attorney General

19. Legal Activities - Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilage).

I have since 1963 been heavily involved in Customs matters, including interpretation of the tariff schedules, the United States Code, and extensive administrative proceedings with the United States Custom Service. A number of these have resulted in litigation, e.g., the celebrated "Barbie Wig Case" (which had to be tried twice, as the Customs Service refused to acquiese in the decision of the United States Customs Court in the first case), and most recently, Vivitar vs. U.S., the first significant "grey market" case. I have negotiated a number of highly satisfactory, and often novel, results for clients in negotiated settlements with the Customs Service.

QUESTIONNAIRE FOR JUDICIAL NOMINEES

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

R. Kenton Musgrave

1. Describe all financial arrangements, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.

None

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

No conflicts are foreseen.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

4. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No

5. If not applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work in pending litigation?

Not applicable.

6. Please complete the attached financial net worth statement in detail. (Add schedules as called for).

Attached

FINANCIAL STATEMENT

NET WORTH

As of June 25, 1987

R. Kenton and Ruth H. Musgrave

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	10,000	Notes payable to banks—secured	62,000
U.S. Government securities—add schedule See Schedule A	20,000	Notes payable to banks—unsecured	-
Listed securities—add schedule A	1,819,897	Notes payable to relatives	-
Unlisted securities—add schedule	-	Notes payable to others	-
Accounts and notes receivable:	-	Accounts and bills due	5,000
Due from relatives and friends		Unpaid income tax	-
Due from others	-	Other unpaid tax and interest	-
Doubtful	-	Real estate mortgages payable—add schedule See Sched. B	25,000
Real estate owned—add schedule B	2,060,000	Chattel mortgages and other liens payable	-
Real estate mortgages receivable	70,000	Other debts—itemize:	
Autos and other personal property	150,000	Brokers margin accts.	100,000
Cash value—life insurance	10,000		
Other assets—itemize:			
Books, art, art objects	150,000		
		Total liabilities	192,000
		Net worth	4,097,897
Total assets	$4,289,897	Total liabilities and net worth	4,289,897
CONTINGENT LIABILITIES		**GENERAL INFORMATION**	
As endorser, comaker or guarantor	-	Are any assets pledged? (Add sch-dule.) See below	Yes*
On leases or contracts	-	Are you defendant in any suits or legal actions? See below	Yes**
Legal Claims	-	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	-		
Other special debt	-		

* Certain shares of Southern California Edison are pledged to the Bank of America for a credit line of $100,000.

** I was named defendant in a suit by a practical nurse who alleged that she should have been named executor (rather than the Bank of America) in a will drawn by me. An arbitrator ruled in my favor on all counts, and the case has been settled.

Schedule A

Securities Held by R. Kenton and Ruth H. Musgrave
As of June 25, 1987

Issuer	No. Shares	Sh. Price	Market Value	Traded
AMAX	297	$ 20	$ 5,940	NYSE
AT&T	1,263	28	35,364	NYSE
Ameritech	165	88	14,520	NYSE
Bell Atlantic	220	70	15,400	NYSE
Bell South	832	41	34,112	NYSE
Buckeye Ptnshp	1,000	25	25,000	OTC
Cal Fed	3,385	35	118,475	NYSE
Chevron	118	60	7,080	NYSE
Cincinatti Gas & El	319	27	8,613	NYSE
Coast Savings & Loan	3,000	18	54,000	NYSE
Computer Commun.	1,100	2	2,000	OTC
Corporate Inc. Fund	12		9,600	Mut. Fund
Exxon	192	90	17,280	NYSE
Ford Motor	500	97	48,500	NYSE
General Motors	125	84	10,500	NYSE
GLENFED	8,600	29	249,000	NYSE
Georgia Pacific	3,000	47	141,000	NYSE
IBM	120	166	19,920	NYSE
Louisiana Pacific	1,714	32	54,848	NYSE
Morrill Lynch Sci	546	12	6,800	Mut Fund
MDC Assets	1,000	17	17,000	OTC
NYNEX	440	70	15,400	NYSE
Pacific Lighting	210	55	11,550	NYSE
Pacific Telesis	220	27	11,880	NYSE
Penna Power & Light	1,200	37	44,400	NYSE
Portland General	200	26	5,200	NYSE
Puget Sound Bancorp	1,284	26	33,384	NYSE
Petroleum Invstmt	1,000	2	2,000	NYSE
San Diego Gas & El	5,050	34	171,700	NYSE
Santa Barbara Appl	13	1,100	14,300	Closely Held
Southern Cal Edison	11,309	32	361,888	NYSE
Southern Company	977	24	23,448	NYSE
Southwest Bell	330	39	12,870	NYSE
Stan West Mining	2,500	4	10,625	OTC
Stone & Webster	200	65	13,000	NYSE
Sportsail, Inc.			40,000	Closely Held
Texaco	1,000	39	39,000	NYSE
U.S. West	220	53	11,660	NYSE
Utah Power & light	2,021	24	48,560	NYSE
Westinghouse Elec	200	66	13,200	NYSE
Wickes Co. Wts.	200	4	1,200	NYSE
Xerox	100	80	8,000	NYSE
L.A. Water Dist. Bonds			52,000	OTC
U.S. Series E Bonds			20,000	-
		Total	$ 1,839,897	

QUESTIONNAIRE FOR JUDICIAL NOMINEES

III. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

R. Kenton Musgrave

1. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

(a) A tendency by judiciary toward problem-solution rather than grievance-resolution;

It is my belief that the judiciary should decide the matter before it, and not an entire problem area. If a grievance is properly brought before a court, that grievance should be resolved; if there is a general problem which is perceived, but which is not before the court, that problem should be left to resolution by the appropriate legislative body.

(b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

To the extent that a judge employs the device of using an individual as a vehicle for the issuance of orders extending to a broad class of individuals, it is improper: The decision to go beyond the litigants before the court can amount to aggresive extension of the judge's views to areas which may be properly beyond his purvue.

(c) A tendency by the judiciary to impose broad affirmative duties upon governments and society;

The imposition of broad affirmative duties upon governments and society can, and often does, amount to judicial legislation. While certain decisions may, of necessity, create new law, such creative enterprise should be circumscribed - voluntarily - to the maximum possible extent. A judge who hides his beliefs to be superior to those of the elected representatives of the people displays a profound distrust of the democratic process, taking he position that the people and their legislators, having failed to do that which the judge feels ought to be done, must have the (often but not always laudable) result achieved for society by the court.

Schedule B

Real Estate Owned by R. Kenton and/or Ruth H. Musgrave
As of June 25, 1987

Residence, Palos Verdes, California	$ 1,500,000
Interest in Mobile Home Park, San Diego, California	150,000
Interest in unimproved property, Orange County, California	75,000
Residence, Mono County, California	225,000
Co-op apartment, New York City	110,000
Total	$ 2,060,000

All of the above property (or interests in property) are free and clear with the exception of the residence in Palos Verdes, which has an outstanding balance, on a first trust deed, of approximately $25,000.

2. (continued)

(d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

The loosening of standards of jurisdictional requirements and ripeness are undesireable in that they open the way to ever-more litigation in a society where litigiousness is already rampant.

(e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

It seems the height of self-arrogation for a member of the judiciary to assume the functions of other branches of government of institutions, in the egoistic - not to say arrogant - belief that only he (or she) has the capability of achieving a certain mandate result in the correct manner. It is one thing to be a judge, and quite another to be an executive, legislator or administrator: that line should not be crossed by the judiciary.

2. What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.

I have endeavored to ensure that clients at all times observed the highest ethical and legal standards, and have done so myself. I have worked with Legal Aid, and have, at no charge or fee, given legal advice and assistance to minority individuals and minority concerns, as well as League of Women Voters, Palos Verdes Community Association, etc.

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July 6, 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: R. KENTON MUSGRAVE
United States Court of
International Trade

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of R. Kenton Musgrave for appointment as Judge of the United States Court of International Trade.

A substantial majority of our Committee is of the opinion that Mr. Musgrave is "Qualified" for this appointment. The minority found him to be Well Qualified.

Sincerely,

ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members